2012

CUMULATIVE SUPPLEMENT

TO

MISSISSIPPI CODE

1972 ANNOTATED

Issued September, 2012

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User's Guide

In order to assist both the legal profession and the layman in obtaining the maximum benefit from the Mississippi Code of 1972 Annotated, a User's Guide has been included in the main volume. This guide contains comments and information on the many features found within the Code intended to increase the usefulness of the Code to the user.

PUBLISHER'S FOREWORD

Statutes

The 2012 Supplement to the Mississippi Code of 1972 Annotated reflects the statute law of Mississippi as amended by the Mississippi Legislature through the end of the 2012 Regular Session.

Annotations

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 2nd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal Series
Mississippi College Law Review
Mississippi Law Journal

Finally, published opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

Amendment Notes

Amendment notes detail how the new legislation affects existing sections.

Editor's Notes

Editor's notes summarize subject matter and legislative history of repealed sections, provide information as to portions of legislative acts that have not been codified, or explain other pertinent information.

Joint Legislative Committee Notes

Joint Legislative Committee notes explain codification decisions and corrections of Code errors made by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation.

Tables

The Statutory Tables volume adds tables showing disposition of legislative acts through the 2012 Regular Session.

Index

The comprehensive Index to the Mississippi Code of 1972 Annotated is replaced annually, and we welcome customer suggestions. The foreword to the Index explains our indexing principles, suggests guidelines for successful index research, and provides methods for contacting indexers.

Acknowledgements

The publisher wishes to acknowledge the cooperation and assistance rendered by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation, as well as the offices of the Attorney General and Secretary of State, in the preparation of this supplement.

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September 2012 LexisNexis

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MISSISSIPPI CODE 1972

ANNOTATED

VOLUME ELEVEN A

TITLE 43

PUBLIC WELFARE

CHAPTER 1

Department of Human Services and County Departments of Public Welfare

IN GENERAL

§ 43-1-1. Department of Human Services to be State Department of Public Welfare [Repealed effective July 1, 2015].

(1) The Department of Human Services shall be the State Department of Public Welfare and shall retain all powers and duties as granted to the State Department of Public Welfare. Wherever the term "State Department of Public Welfare" or "State Board of Public Welfare" appears in any law, the same shall mean the Department of Human Services. The Executive Director of Human Services may assign to the appropriate offices such powers and duties deemed appropriate to carry out the lawful functions of the department.

(2) This section shall stand repealed on July 1, 2015.

SOURCES: Codes, 1942, § 7217; Laws, 1936, ch. 175; Laws, 1940, ch. 298; Laws, 1986, ch. 500, § 34; Laws, 1989, ch. 544, § 61; Laws, 1990, ch. 522, § 17; Laws, 1992, ch. 585 § 2; reenacted and amended, Laws, 1994 Ex Sess, ch. 22, § 1; Laws, 2001, ch. 599, § 2; Laws, 2002, ch. 573, § 1; reenacted and amended, Laws, 2005, ch. 537, § 1; Laws, 2009, ch. 564, § 1; Laws, 2012, ch. 470, § 1, eff from and after June 30, 2012.

Amendment Notes — The 2012 amendment extended the repealer provision from "July 1, 2012" to "July 1, 2015."

§ 43-1-2. Mississippi Department of Human Services; Executive Director of Human Services; Joint Oversight Committee; powers of executive director; structure of department [Repealed effective July 1, 2015].

(1) There is created the Mississippi Department of Human Services, whose offices shall be located in Jackson, Mississippi, and which shall be under the policy direction of the Governor.

(2) The chief administrative officer of the department shall be the Executive Director of Human Services. The Governor shall appoint the Executive Director of Human Services with the advice and consent of the Senate, and he shall serve at the will and pleasure of the Governor, and until his successor is appointed and qualified. The Executive Director of Human Services shall possess the following qualifications:

(a) A bachelor's degree from an accredited institution of higher learning and ten (10) years' experience in management, public administration, finance or accounting; or

(b) A master's or doctoral degree from an accredited institution of higher learning and five (5) years' experience in management, public administration, finance or accounting.

Those qualifications shall be certified by the State Personnel Board.

(3) There shall be a Joint Oversight Committee of the Department of Human Services composed of the respective chairmen of the Senate Public Health and Welfare Committee, the Senate Appropriations Committee, the

House Public Health and Human Services Committee and the House Appropriations Committee, three (3) members of the Senate appointed by the Lieutenant Governor to serve at the will and pleasure of the Lieutenant Governor, and three (3) members of the House of Representatives appointed by the Speaker of the House to serve at the will and pleasure of the Speaker. The chairmanship of the committee shall alternate for twelve-month periods between the Senate members and the House members, on May 1 of each year, with the Chairman of the Senate Public Health and Welfare Committee serving as chairman beginning in even-numbered years, and the Chairman of the House Public Health and Human Services Committee serving as chairman beginning in odd-numbered years. The committee shall meet once each quarter, or upon the call of the chairman at such times as he deems necessary or advisable, and may make recommendations to the Legislature pertaining to any matter within the jurisdiction of the Mississippi Department of Human Services. The appointing authorities may designate an alternate member from their respective houses to serve when the regular designee is unable to attend such meetings of the oversight committee. For attending meetings of the oversight committee, such legislators shall receive per diem and expenses which shall be paid from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session; however, no per diem and expenses for attending meetings of the committee will be paid while the Legislature is in session. No per diem and expenses will be paid except for attending meetings of the oversight committee without prior approval of the proper committee in their respective houses.

(4) The Department of Human Services shall provide the services authorized by law to every individual determined to be eligible therefor, and in carrying out the purposes of the department, the executive director is authorized:

(a) To formulate the policy of the department regarding human services within the jurisdiction of the department;

(b) To adopt, modify, repeal and promulgate, after due notice and hearing, and where not otherwise prohibited by federal or state law, to make exceptions to and grant exemptions and variances from, and to enforce rules and regulations implementing or effectuating the powers and duties of the department under any and all statutes within the department's jurisdiction, all of which shall be binding upon the county departments of human services;

(c) To apply for, receive and expend any federal or state funds or contributions, gifts, devises, bequests or funds from any other source;

(d) Except as limited by Section 43-1-3, to enter into and execute contracts, grants and cooperative agreements with any federal or state agency or subdivision thereof, or any public or private institution located inside or outside the State of Mississippi, or any person, corporation or association in connection with carrying out the programs of the department; and

(e) To discharge such other duties, responsibilities and powers as are necessary to implement the programs of the department.

(5) The executive director shall establish the organizational structure of the Mississippi Department of Human Services which shall include the creation of any units necessary to implement the duties assigned to the department and consistent with specific requirements of law, including, but not limited to:

(a) Office of Family Children's Services;

(b) Office of Youth Services;

(c) Office of Economic Assistance;

(d) Office of Child Support Enforcement; or

(e) Office of Field Operations to administer any state or county level programs under the purview of the Mississippi Department of Human Services, with the exception of programs which fall under paragraphs (a) and (b) above.

(6) The Executive Director of Human Services shall appoint heads of offices, bureaus and divisions, as defined in Section 7-17-11, who shall serve at the pleasure of the executive director. The salary and compensation of such office, bureau and division heads shall be subject to the rules and regulations adopted and promulgated by the State Personnel Board as created under Section 25-9-101 et seq. The executive director shall have the authority to organize offices as deemed appropriate to carry out the responsibilities of the department. The organization charts of the department shall be presented annually with the budget request of the Governor for review by the Legislature.

(7) This section shall stand repealed on July 1, 2015.

SOURCES: Laws, 1989, ch. 544, § 59; Laws, 1990, ch. 522, § 18; Laws, 1991, ch. 608, § 27; Laws, 1992, ch. 585 § 1; reenacted and amended, Laws, 1994 Ex Sess, ch. 22, § 2; Laws, 1997, ch. 316, § 15; Laws, 2001, ch. 599, § 3; Laws, 2002, ch. 573, § 2; reenacted and amended, Laws, 2005, ch. 537, § 2; Laws, 2009, ch. 564, § 2; Laws, 2012, ch. 470, § 2, eff from and after June 30, 2012.

Amendment Notes — The 2012 amendment inserted "or" at the end of (5)(d); added (5)(e); and extended the repealer provision in (7) from "July 1, 2012" to "July 1, 2015."

§ 43-1-3. Delegation, privatization, or contracting with private entity for operation of office, bureau or division of department [Repealed effective July 1, 2015].

Notwithstanding the authority granted under subsection (4)(d) of Section 43-1-2, the Department of Human Services or the Executive Director of Human Services shall not be authorized to delegate, privatize or otherwise enter into a contract with a private entity for the operation of any office, bureau or division of the department, as defined in Section 7-17-11, without specific authority to do so by general act of the Legislature. However, nothing in this section shall be construed to invalidate (i) any contract of the department that is in place and operational before January 1, 1994; or (ii) the continued renewal

of any such contract with the same entity upon the expiration of the contract; or (iii) the execution of a contract with another legal entity as a replacement of any such contract that is expiring, provided that the replacement contract is substantially the same as the expiring contract.

This section shall stand repealed on July 1, 2015.

SOURCES: Laws, 1994, Ex Sess, ch. 22, § 3; Laws, 2001, ch. 599, § 4; Laws, 2002, ch. 573, § 3; reenacted and amended, Laws, 2005, ch. 537, § 3; Laws, 2009, ch. 564, § 3; Laws, 2012, ch. 470, § 3, eff from and after June 30, 2012.

Amendment Notes — The 2012 amendment extended the repealer provision from "July 1, 2012" to "July 1, 2015" in the last paragraph.

§ 43-1-4. Powers and duties of department.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in subsection (e). In clause (ii), "who is" was substituted for "who are." The Joint Committee ratified the correction at its July 22, 2010, meeting. The text of the section is correct as it appears in the bound volume so it is not set out in the supplement.

Editor's Note — "Vulnerable Adult Act," referred to in subsection (e), was changed to "Vulnerable Persons Act" to conform to changes by Laws of 2010, ch. 357.

§ 43-1-5. Duties of department [Repealed effective July 1, 2015].

It shall be the duty of the Department of Human Services to:

(1) Establish and maintain programs not inconsistent with the terms of this chapter and the rules, regulations and policies of the Department of Human Services, and publish the rules and regulations of the department pertaining to such programs.

(2) Make such reports in such form and containing such information as the federal government may, from time to time, require, and comply with such provisions as the federal government may, from time to time, find necessary to assure the correctness and verification of such reports.

(3) Within ninety (90) days after the end of each fiscal year, and at each regular session of the Legislature, make and publish one (1) report to the Governor and to the Legislature, showing for the period of time covered, in each county and for the state as a whole:

(a) The total number of recipients;

(b) The total amount paid to them in cash;

(c) The maximum and the minimum amount paid to any recipients in any one (1) month;

(d) The total number of applications;

(e) The number granted;

(f) The number denied;

(g) The number cancelled;

(h) The amount expended for administration of the provisions of this chapter;

(i) The amount of money received from the federal government, if any;

(j) The amount of money received from recipients of assistance and from their estates and the disposition of same;

(k) Such other information and recommendations as the Governor may require or the department shall deem advisable;

(*l*) The number of state-owned automobiles purchased and operated during the year by the department, the number purchased and operated out of funds appropriated by the Legislature, the number purchased and operated out of any other public funds, the miles traveled per automobile, the total miles traveled, the average cost per mile and depreciation estimate on each automobile;

(m) The cost per mile and total number of miles traveled by department employees in privately owned automobiles, for which reimbursement is made out of state funds;

(n) Each association, convention or meeting attended by any department employees, the purposes thereof, the names of the employees attending and the total cost to the state of such convention, association or meeting;

(o) How the money appropriated to the institutions under the jurisdiction of the department has been expended during the preceding year, beginning and ending with the fiscal year of each institution, exhibiting the salaries paid to officers and employees of the institutions, and each and every item of receipt and expenditure;

(p) The activities of each office within the Department of Human Services and recommendations for improvement of the services to be performed by each division.

Each report shall be balanced and shall begin with the balance at the end of the preceding fiscal year, and if any property belonging to the state or the institution is used for profit, such report shall show the expenses incurred in managing the property and the amount received from the same. Such reports shall also show a summary of the gross receipts and gross disbursements for each fiscal year and shall show the money on hand at the beginning of the fiscal period of each division and institution of the department.

This section shall stand repealed on July 1, 2015.

SOURCES: Codes, 1942, § 7219; Laws, 1936, ch. 175; Laws, 1940, ch. 298; Laws, 1946, ch. 331, § 1; Laws, 1950, ch. 527; Laws, 1952, ch. 388, § 1; Laws, 1954, ch. 355, § 1; Laws, 1958, ch. 349; Laws, 1966, ch. 445, § 21; Laws, 1983, ch. 504, § 2; Laws, 1989, ch. 544, § 63; Laws, 1990, ch. 522, § 19; Laws, 1991, ch. 434, § 1; Laws, 1992, ch. 585, § 3; Laws, 1992, ch. 523, § 1; reenacted and amended, Laws, 1994 Ex Sess, ch. 22, § 4; Laws, 2001, ch. 599, § 5; Laws, 2002, ch. 573, § 4; reenacted and amended, Laws, 2005, ch. 537, § 4; Laws, 2009, ch. 564, § 4; Laws, 2012, ch. 470, § 4, eff from and after June 30, 2012.

Amendment Notes — The 2012 amendment deleted former (3)(q) which read: "In order of authority, the twenty (20) highest paid employees in the department receiving an annual salary in excess of Forty Thousand Dollars ($40,000.00), by P.I.N. number, job title, job description and annual salary."; and extended the repealer provision from "July 1, 2012" to "July 1, 2015" in the last paragraph of (3).

§ 43-1-13. Political activity.

(1) Except as otherwise provided in subsection (2) of this section, it shall be unlawful for a commissioner or any other employee of the state or county welfare departments to take an active part in any partisan political campaign. For violation of this provision the offending party shall be removed from office and in addition thereto, upon conviction, shall be guilty of a misdemeanor, subject to a fine of not more than Two Hundred Dollars ($200.00).

(2) This section shall not preclude an individual from seeking elective office where the office sought is nonpartisan and is not within the judicial branch of government.

SOURCES: Codes, 1942, § 7222; Laws, 1936, ch. 175; Laws, 1940, ch. 298; Laws, 2010, ch. 439, § 1, eff from and after July 7, 2010 (the date the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965, to the amendment of this section.)

Editor's Note — By letter dated July 7, 2010, the United States Attorney General interposed no objection under Section 5 of the Voting Rights Act of 1965 to the amendment to this section by Laws of 2010, ch. 439, § 1.

Amendment Notes — The 2010 amendment in (1), inserted the exception at the beginning and "partisan"; and added (2).

§ 43-1-29.1. Department of Human Services authorized to develop pilot program to track usage of Supplemental Nutritional Assistance Program benefits.

(1) The Department of Human Services, is authorized, in its discretion, to develop a pilot program to track recipients of assistance under the Supplemental Nutritional Assistance Program (SNAP), formerly known as the Food Stamp Program. The tracking pilot program, if established, shall:

(a) Track the recipients' usage of SNAP benefits from the time they first receive the benefits, the length of time that they receive the benefits, when they terminate participation in the SNAP program, and patterns of usage while receiving the benefits.

(b) Follow the recipients after termination of participation in the SNAP program, to the extent feasible, to attempt to discover the paths that they take after leaving the SNAP program and the patterns of return to the SNAP program, including the factors that may influence these paths and patterns.

(c) On or before December 1 of each year, the Department of Human Services shall provide summaries of the information obtained under the tracking pilot program during the previous fiscal year to the Speaker of the House of Representatives, the Lieutenant Governor, and the Chairmen of

the House Public Health and Human Services Committee, the Senate Public Health and Welfare Committee, the House Medicaid Committee and the House Select Committee on Poverty, and shall provide more detailed information to any of those persons upon request.

SOURCES: Laws, 2010, ch. 469, § 1, eff from and after July 1, 2010.

Editor's Note — The section as enacted contains a subsection (1), but no subsection (2).

§ 43-1-30. Mississippi TANF Implementation Council [Repealed effective July 1, 2019].

SOURCES: Laws, 1993, ch. 614, § 13; Laws, 1997, ch. 316, § 20; Laws, 2004, ch. 572, § 48; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 48; reenacted without change, Laws, 2010, ch. 559, § 48; reenacted without change, Laws, 2011, ch. 471, § 49; reenacted without change, Laws, 2012, ch. 515, § 49, eff from and after July 1, 2012.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, and as amended by Laws of 2012, ch. 515, § 58, provides:

"SECTION 60. This act shall stand repealed on July 1, 2019."

This section was reenacted without change by Laws of 2010, ch. 559, effective from after July 1, 2010. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

This section was reenacted without change by Laws of 2011, ch. 471, effective from and after July 1, 2011. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Section 37-4-5 provides that the terms "Junior College Commission" and "State Board for Community and Junior Colleges," wherever they appear in the laws of Mississippi, shall mean the "Mississippi Community College Board."

This section was reenacted without change by Laws of 2012, ch. 515, effective from and after July 1, 2012. Since the language of the section as it appears in the main volume is unaffected by the reenactment, it is not reprinted in this supplement.

Amendment Notes — The 2010 amendment reenacted the section without change.

The 2011 amendment reenacted the section without change.

The 2012 amendment reenacted the section without change.

DIVISION OF FAMILY AND CHILDREN'S SERVICES

SEC.

§ 43-1-55. Standards for employment and service delivery; Training and Testing Advisory Council created; duties; membership; meetings; chairperson; quorum [Repealed effective July 1, 2015].

(1) The Office of Family and Children's Services and the Division of Aging and Adult Services shall devise formal standards for employment as a family protection worker and as a family protection specialist within their respective offices and for service delivery designed to measure the quality of services delivered to clients, as well as the timeliness of services. Each family protection worker and family protection specialist shall be assessed annually by a supervisor who is a licensed social worker who is knowledgeable in the standards promulgated. The standards devised by each office shall be applicable to all family protection workers and family protection specialists working under that office.

(2) The Office of Family and Children's Services shall devise formal standards for family protection workers of the Department of Human Services who are not licensed social workers. Those standards shall require that:

(a) In order to be employed as a family protection worker, a person must have a bachelor's degree in either psychology, sociology, nursing, family studies, or a related field, or a graduate degree in either psychology, sociology, nursing, criminal justice, counseling, marriage and family therapy or a related field. The determination of what is a related field shall be made by certification of the State Personnel Board; and

(b) Before a person may provide services as a family protection worker, the person shall complete four (4) weeks of intensive training provided by the training unit of the Office of Family and Children's Services, and shall take and receive a passing score on the certification test administered by the training unit upon completion of the four-week training. Upon receiving a passing score on the certification test, the person shall be certified as a family protection worker by the Department of Human Services. Any person who does not receive a passing score on the certification test shall not be employed or maintain employment as a family protection worker for the department. Further, a person, qualified as a family protection worker through the procedures set forth above, shall not conduct forensic interviews of children until the worker receives additional specialized training in child forensic interview protocols and techniques by a course or curriculum approved by the Department of Human Services to be not less than forty (40) hours.

(3) For the purpose of providing services in child abuse or neglect cases, youth court proceedings, vulnerable adults cases, and such other cases as designated by the Executive Director of Human Services, the caseworker or service provider shall be a family protection specialist or a family protection worker whose work is overseen by a family protection specialist who is a licensed social worker.

(4) The Department of Human Services and the Office of Family and Children's Services shall seek to employ and use family protection specialists

to provide the services of the office, and may employ and use family protection workers to provide those services only in counties in which there is not a sufficient number of family protection specialists to adequately provide those services in the county.

(5)(a) There is created a Training and Testing Advisory Council to review the department's program of training and testing of family protection workers and to make recommendations pertaining to the program to the department. The advisory council shall be composed of the following ten (10) members: two (2) employees of the department appointed by the Executive Director of Human Services, including one (1) representative of the Office of Family and Children's Services and one (1) representative of the Division of Aging and Adult Services; the Chairman of the Consortium of Accredited Schools of Social Work in Mississippi; and the executive director or a board member of a professional association or licensing board for each field of study named in subsection (2) (a) of this section, as follows: the Mississippi Chapter of the National Association of Social Workers; a marriage and family therapist who is a member of the Board of Examiners for Social Workers and Marriage and Family Therapists, to be selected by the four (4) members of the board of examiners who are marriage and family therapists; the Mississippi Nurses' Association; the Mississippi Prosecutors Association; the Mississippi Counseling Association; the Mississippi Psychological Association; and an officer of the Alabama-Mississippi Sociological Association who is a Mississippi resident elected by the executive committee of the association. The executive director of each association (excluding the Alabama-Mississippi Sociological Association) and chairman of the consortium may designate an alternate member to serve in his stead on the advisory council. Members of the advisory council shall serve without salary or per diem.

(b) A majority of the advisory council members shall select from their membership a chairperson to preside over meetings and a vice chairperson to preside in the absence of the chairperson or when the chairperson is excused. The advisory council shall adopt procedures governing the manner of conducting its business. A majority of the members shall constitute a quorum to do business.

(6) This section and Section 43-27-107, Mississippi Code of 1972, shall stand repealed on July 1, 2015.

SOURCES: Laws, 1986, ch. 500, § 38; Laws, 2004, ch. 489, § 1; Laws, 2006, ch. 589, § 2; Laws, 2006, ch. 600, § 1; Laws, 2009, ch. 364, § 1; Laws, 2010, ch. 461, § 1; Laws, 2012, ch. 470, § 6, eff from and after June 30, 2012.

Editor's Note — In (3), there is a reference to "vulnerable adult cases." The "Vulnerable Adult Act" was renamed the "Vulnerable Persons Act" by Laws of 2010, ch. 357 to change references to "vulnerable adult" to "vulnerable person."

Amendment Notes — The 2010 amendment substituted "July 1, 2012" for "July 1, 2010" in (6).

The 2012 amendment extended the repealer provision from "July 1, 2012" to "July 1, 2015" in (6).

CHAPTER 3

Blind Persons

MISSISSIPPI INDUSTRIES FOR THE BLIND

§ 43-3-101. Mississippi Industries for the Blind; general powers.

There is hereby created and established an agency of the State of Mississippi known as the Mississippi Industries for the Blind, hereinafter referred to as the "MIB." The MIB shall be a body politic and corporate, may acquire and hold real and personal property, may receive, hold and disperse monies appropriated to it by the Legislature of the State of Mississippi received from the federal government, received from the sale of products which it produces, and received from any other sources whatsoever, and may sue and be sued in its name. The MIB is authorized and empowered to establish nonprofit entities for the purpose of defraying costs incurred in the performance of the MIB's purpose and responsibilities.

SOURCES: Laws, 1983, ch. 422, § 1; Laws, 2010, ch. 309, § 1, eff from and after passage (approved Mar. 3, 2010.)

Amendment Notes — The 2010 amendment added the last sentence.

CHAPTER 6

Rights and Liabilities of Individuals with Disabilities

ARTICLE 7.

USE OF RESPECTFUL REFERENCES TO INDIVIDUALS WITH DISABILITIES.

§ 43-6-171. Legislative drafting offices and state agencies to use certain respectful references to individuals with disabilities in the preparation of legislation and rules.

(1) The Legislature recognizes that language used in reference to individuals with disabilities shapes and reflects society's attitudes towards people

with disabilities. Many of the terms currently used diminish the humanity and natural condition of having a disability. Certain terms are demeaning and create an invisible barrier to inclusion as equal community members. The Legislature finds it necessary to clarify preferred language for new and revised laws and rules by requiring the use of terminology that puts the person before the disability.

(2) The legislative drafting offices of the House and Senate are directed to avoid all references to the terms "disabled," "developmentally disabled," "mentally disabled," "mentally ill," "mentally retarded," "handicapped," "cripple" and "crippled," in any new statute, memorial or resolution, and to change those references in any existing statute, memorial or resolution as sections including those references are otherwise amended by law. The drafting offices are directed to replace the terms referenced above as appropriate with the following revised terminology: "individuals with disabilities," "individuals with developmental disabilities," "individuals with mental illness" and "individuals with an intellectual disability."

(3) No statute, memorial or resolution is invalid because it does not comply with this section.

(4) All state agency orders creating new rules, or amending existing rules, shall be formulated in accordance with the requirements of subsection (1) of this section regarding the use of respectful language.

(5) No agency rule is invalid because it does not comply with this section.

SOURCES: Laws, 2005, ch. 474, § 1; Laws, 2010, ch. 476, § 69, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment substituted "with an intellectual disability" for "with mental retardation" at the end of (2).

CHAPTER 11

Institutions for the Aged or Infirm

IN GENERAL

§ 43-11-1. Definitions.

When used in this chapter, the following words shall have the following meaning:

(a) "Institutions for the aged or infirm" means a place either governmental or private that provides group living arrangements for four (4) or more persons who are unrelated to the operator and who are being provided food, shelter and personal care, whether any such place is organized or operated for profit or not. The term "institution for aged or infirm" includes nursing homes, pediatric skilled nursing facilities, psychiatric residential treatment facilities, convalescent homes, homes for the aged and adult foster care facilities, provided that these institutions fall within the scope of the definitions set forth above. The term "institution for the aged or infirm" does not include hospitals, clinics or mental institutions devoted primarily to providing medical service, and does not include any private residence in which the owner of the residence is providing personal care services to disabled or homeless veterans under an agreement with, and in compliance with the standards prescribed by, the United States Department of Veterans Affairs, if the owner of the residence also provided personal care services to disabled or homeless veterans at any time during calendar year 2008.

(b) "Person" means any individual, firm, partnership, corporation, company, association or joint-stock association, or any licensee herein or the legal successor thereof.

(c) "Personal care" means assistance rendered by personnel of the home to aged or infirm residents in performing one or more of the activities of daily living, which includes, but is not limited to, the bathing, walking, excretory functions, feeding, personal grooming and dressing of such residents.

(d) "Psychiatric residential treatment facility" means any nonhospital establishment with permanent facilities which provides a twenty-four-hour program of care by qualified therapists, including, but not limited to, duly licensed mental health professionals, psychiatrists, psychologists, psychotherapists and licensed certified social workers, for emotionally disturbed children and adolescents referred to such facility by a court, local school district or by the Department of Human Services, who are not in an acute phase of illness requiring the services of a psychiatric hospital, and are in need of such restorative treatment services. For purposes of this paragraph, the term "emotionally disturbed" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:

1. An inability to learn which cannot be explained by intellectual, sensory or health factors;

2. An inability to build or maintain satisfactory relationships with peers and teachers;

3. Inappropriate types of behavior or feelings under normal circumstances;

4. A general pervasive mood of unhappiness or depression; or

5. A tendency to develop physical symptoms or fears associated with personal or school problems. An establishment furnishing primarily domiciliary care is not within this definition.

(e) "Pediatric skilled nursing facility" means an institution or a distinct part of an institution that is primarily engaged in providing to inpatients skilled nursing care and related services for persons under twenty-one (21) years of age who require medical or nursing care or rehabilitation services for the rehabilitation of injured, disabled or sick persons.

(f) "Licensing agency" means the State Department of Health.

(g) "Medical records" mean, without restriction, those medical histories, records, reports, summaries, diagnoses and prognoses, records of treatment and medication ordered and given, notes, entries, x-rays and other written or graphic data prepared, kept, made or maintained in institutions for the aged or infirm that pertain to residency in, or services rendered to residents of, an institution for the aged or infirm.

(h) "Adult foster care facility" means a home setting for vulnerable adults in the community who are unable to live independently due to physical, emotional, developmental or mental impairments, or in need of emergency and continuing protective social services for purposes of preventing further abuse or neglect and for safeguarding and enhancing the welfare of the abused or neglected vulnerable adult. Adult foster care programs shall be designed to meet the needs of vulnerable adults with impairments through individual plans of care, which provide a variety of health, social and related support services in a protective setting, enabling participants to live in the community. Adult foster care programs may be (i) traditional, where the foster care provider lives in the residence and is the primary caregiver to clients in the home; (ii) corporate, where the foster care home is operated by a corporation with shift staff delivering services to clients; or (iii) shelter, where the foster care home accepts clients on an emergency short-term basis for up to thirty (30) days.

SOURCES: Codes, 1942, § 6964-01; Laws, 1952, ch. 384, § 1; Laws, 1964, ch. 429, § 1; Laws, 1979, ch. 451, § 25; Laws, 1986, ch. 437, § 29; Laws, 1990, ch. 510, § 3; Laws, 1993, ch. 609, § 11; Laws, 2002, 3rd Ex Sess, ch. 2, § 9; Laws, 2007, ch. 552, § 1; Laws, 2009, ch. 478, § 1; Laws, 2011, ch. 438, § 1, eff from and after July 1, 2011.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (h)(ii). In both versions of the section, (h)(ii) was corrected by substituting "shift staff delivering services" for "shift staff delivery services." The Joint Committee ratified the correction at its July 22, 2010, meeting.

Editor's Note — In (h), there are references to "vulnerable adults." The "Vulnerable Adult Act" was renamed the "Vulnerable Persons Act" by Laws of 2010, ch. 357 to change references to "vulnerable adult' to "vulnerable person."

Amendment Notes — The 2011 amendment deleted the reverter on the provision that exempts from personal care home licensure certain private residences in which

personal care services are provided to disabled or homeless veterans under agreement with Department of Veterans Affairs.

Cross References — Evaluation and review of professional health services providers, see §§ 41-63-1 et seq. to the amended act.

Vulnerable persons generally, see §§ 43-47-1 et seq.

Institutions for aged or infirm as defined in this section as "care facility" for purposes of Vulnerable Persons Act, see § 43-47-5.

§ 43-11-11. Denial or revocation of license; hearings and review.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in the second paragraph, by substituting "appeals the decision of the chancery court pursuant to Section 43-11-23" for "appeals to the decision of the chancery court; pursuant to Section 43-11-23" at the end. The Joint Committee ratified the correction at its July 22, 2010, meeting. Since the language of the section as it appears in the main volume is correct, it is not set out in the supplement.

§ 43-11-13. Rules, regulations and standards; compliance and inspection with respect to fire prevention measures; scheduled drugs in personal care homes; resident may consent in writing to continue residing in personal care home regardless of determination by licensing agency that skilled nursing services appropriate; regulations regarding patient's personal deposit accounts and use of patient food and medicine records; criminal record checks for new employees at institutions or facilities; affidavit concerning criminal offenses required of current employees; penalty for perjury; civil immunity for health care facilities regarding employment decisions; rules, regulations and standards regarding operation of adult foster care facilities [Subsection (4) repealed effective June 30, 2014].

(1) The licensing agency shall adopt, amend, promulgate and enforce such rules, regulations and standards, including classifications, with respect to all institutions for the aged or infirm to be licensed under this chapter as may be designed to further the accomplishment of the purpose of this chapter in promoting adequate care of individuals in those institutions in the interest of public health, safety and welfare. Those rules, regulations and standards shall be adopted and promulgated by the licensing agency and shall be recorded and indexed in a book to be maintained by the licensing agency in its main office in the State of Mississippi, entitled "Rules, Regulations and Minimum Standards for Institutions for the Aged or Infirm" and the book shall be open and available to all institutions for the aged or infirm and the public generally at all reasonable times. Upon the adoption of those rules, regulations and standards, the licensing agency shall mail copies thereof to all those institutions in the state that have filed with the agency their names and addresses for this

purpose, but the failure to mail the same or the failure of the institutions to receive the same shall in no way affect the validity thereof. The rules, regulations and standards may be amended by the licensing agency, from time to time, as necessary to promote the health, safety and welfare of persons living in those institutions.

(2) The licensee shall keep posted in a conspicuous place on the licensed premises all current rules, regulations and minimum standards applicable to fire protection measures as adopted by the licensing agency. The licensee shall furnish to the licensing agency at least once each six (6) months a certificate of approval and inspection by state or local fire authorities. Failure to comply with state laws and/or municipal ordinances and current rules, regulations and minimum standards as adopted by the licensing agency, relative to fire prevention measures, shall be prima facie evidence for revocation of license.

(3) The State Board of Health shall promulgate rules and regulations restricting the storage, quantity and classes of drugs allowed in personal care homes and adult foster care facilities. Residents requiring administration of Schedule II Narcotics as defined in the Uniform Controlled Substances Law may be admitted to a personal care home. Schedule drugs may only be allowed in a personal care home if they are administered or stored utilizing proper procedures under the direct supervision of a licensed physician or nurse.

(4)(a) Notwithstanding any determination by the licensing agency that skilled nursing services would be appropriate for a resident of a personal care home, that resident, the resident's guardian or the legally recognized responsible party for the resident may consent in writing for the resident to continue to reside in the personal care home, if approved in writing by a licensed physician. However, no personal care home shall allow more than two (2) residents, or ten percent (10%) of the total number of residents in the facility, whichever is greater, to remain in the personal care home under the provisions of this subsection (4). This consent shall be deemed to be appropriately informed consent as described in the regulations promulgated by the licensing agency. After that written consent has been obtained, the resident shall have the right to continue to reside in the personal care home for as long as the resident meets the other conditions for residing in the personal care home. A copy of the written consent and the physician's approval shall be forwarded by the personal care home to the licensing agency.

(b) The State Board of Health shall promulgate rules and regulations restricting the handling of a resident's personal deposits by the director of a personal care home. Any funds given or provided for the purpose of supplying extra comforts, conveniences or services to any resident in any personal care home, and any funds otherwise received and held from, for or on behalf of any such resident, shall be deposited by the director or other proper officer of the personal care home to the credit of that resident in an account that shall be known as the Resident's Personal Deposit Fund. No more than one (1) month's charge for the care, support, maintenance and medical attention of the resident shall be applied from the account at any one time. After the

death, discharge or transfer of any resident for whose benefit any such fund has been provided, any unexpended balance remaining in his personal deposit fund shall be applied for the payment of care, cost of support, maintenance and medical attention that is accrued. If any unexpended balance remains in that resident's personal deposit fund after complete reimbursement has been made for payment of care, support, maintenance and medical attention, and the director or other proper officer of the personal care home has been or shall be unable to locate the person or persons entitled to the unexpended balance, the director or other proper officer may, after the lapse of one (1) year from the date of that death, discharge or transfer, deposit the unexpended balance to the credit of the personal care home's operating fund.

(c) The State Board of Health shall promulgate rules and regulations requiring personal care homes to maintain records relating to health condition, medicine dispensed and administered, and any reaction to that medicine. The director of the personal care home shall be responsible for explaining the availability of those records to the family of the resident at any time upon reasonable request.

(d) This subsection (4) shall stand repealed on June 30, 2014.

(5)(a) For the purposes of this subsection (5):

(i) "Licensed entity" means a hospital, nursing home, personal care home, home health agency, hospice or adult foster care facility;

(ii) "Covered entity" means a licensed entity or a health care professional staffing agency;

(iii) "Employee" means any individual employed by a covered entity, and also includes any individual who by contract provides to the patients, residents or clients being served by the covered entity direct, hands-on, medical patient care in a patient's, resident's or client's room or in treatment or recovery rooms. The term "employee" does not include health care professional/vocational technical students, as defined in Section 37-29-232, performing clinical training in a licensed entity under contracts between their schools and the licensed entity, and does not include students at high schools located in Mississippi who observe the treatment and care of patients in a licensed entity as part of the requirements of an allied-health course taught in the high school, if:

1. The student is under the supervision of a licensed health care provider; and

2. The student has signed an affidavit that is on file at the student's school stating that he or she has not been convicted of or pleaded guilty or nolo contendere to a felony listed in paragraph (d) of this subsection (5), or that any such conviction or plea was reversed on appeal or a pardon was granted for the conviction or plea. Before any student may sign such an affidavit, the student's school shall provide information to the student explaining what a felony is and the nature of the felonies listed in paragraph (d) of this subsection (5).

However, the health care professional/vocational technical academic program in which the student is enrolled may require the student to obtain criminal history record checks under the provisions of Section 37-29-232.

(b) Under regulations promulgated by the State Board of Health, the licensing agency shall require to be performed a criminal history record check on (i) every new employee of a covered entity who provides direct patient care or services and who is employed on or after July 1, 2003, and (ii) every employee of a covered entity employed before July 1, 2003, who has a documented disciplinary action by his or her present employer. In addition, the licensing agency shall require the covered entity to perform a disciplinary check with the professional licensing agency of each employee, if any, to determine if any disciplinary action has been taken against the employee by that agency.

Except as otherwise provided in paragraph (c) of this subsection (5), no such employee hired on or after July 1, 2003, shall be permitted to provide direct patient care until the results of the criminal history record check have revealed no disqualifying record or the employee has been granted a waiver. In order to determine the employee applicant's suitability for employment, the applicant shall be fingerprinted. Fingerprints shall be submitted to the licensing agency from scanning, with the results processed through the Department of Public Safety's Criminal Information Center. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Department of Public Safety to the Federal Bureau of Investigation for a national criminal history record check. The licensing agency shall notify the covered entity of the results of an employee applicant's criminal history record check. If the criminal history record check discloses a felony conviction, guilty plea or plea of nolo contendere to a felony of possession or sale of drugs, murder, manslaughter, armed robbery, rape, sexual battery, sex offense listed in Section 45-33-23(g), child abuse, arson, grand larceny, burglary, gratification of lust or aggravated assault, or felonious abuse and/or battery of a vulnerable adult that has not been reversed on appeal or for which a pardon has not been granted, the employee applicant shall not be eligible to be employed by the covered entity.

(c) Any such new employee applicant may, however, be employed on a temporary basis pending the results of the criminal history record check, but any employment contract with the new employee shall be voidable if the new employee receives a disqualifying criminal history record check and no waiver is granted as provided in this subsection (5).

(d) Under regulations promulgated by the State Board of Health, the licensing agency shall require every employee of a covered entity employed before July 1, 2003, to sign an affidavit stating that he or she has not been convicted of or pleaded guilty or nolo contendere to a felony of possession or sale of drugs, murder, manslaughter, armed robbery, rape, sexual battery, any sex offense listed in Section 45-33-23(g), child abuse, arson, grand larceny, burglary, gratification of lust, aggravated assault, or felonious abuse and/or battery of a vulnerable adult, or that any such conviction or plea was

reversed on appeal or a pardon was granted for the conviction or plea. No such employee of a covered entity hired before July 1, 2003, shall be permitted to provide direct patient care until the employee has signed the affidavit required by this paragraph (d). All such existing employees of covered entities must sign the affidavit required by this paragraph (d) within six (6) months of the final adoption of the regulations promulgated by the State Board of Health. If a person signs the affidavit required by this paragraph (d), and it is later determined that the person actually had been convicted of or pleaded guilty or nolo contendere to any of the offenses listed in this paragraph (d) and the conviction or plea has not been reversed on appeal or a pardon has not been granted for the conviction or plea, the person is guilty of perjury. If the offense that the person was convicted of or pleaded guilty or nolo contendere to was a violent offense, the person, upon a conviction of perjury under this paragraph, shall be punished as provided in Section 97-9-61. If the offense that the person was convicted of or pleaded guilty or nolo contendere to was a nonviolent offense, the person, upon a conviction of perjury under this paragraph, shall be punished by a fine of not more than Five Hundred Dollars ($500.00), or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

(e) The covered entity may, in its discretion, allow any employee who is unable to sign the affidavit required by paragraph (d) of this subsection (5) or any employee applicant aggrieved by an employment decision under this subsection (5) to appear before the covered entity's hiring officer, or his or her designee, to show mitigating circumstances that may exist and allow the employee or employee applicant to be employed by the covered entity. The covered entity, upon report and recommendation of the hiring officer, may grant waivers for those mitigating circumstances, which shall include, but not be limited to: (i) age at which the crime was committed; (ii) circumstances surrounding the crime; (iii) length of time since the conviction and criminal history since the conviction; (iv) work history; (v) current employment and character references; and (vi) other evidence demonstrating the ability of the individual to perform the employment responsibilities competently and that the individual does not pose a threat to the health or safety of the patients of the covered entity.

(f) The licensing agency may charge the covered entity submitting the fingerprints a fee not to exceed Fifty Dollars ($50.00), which covered entity may, in its discretion, charge the same fee, or a portion thereof, to the employee applicant. Any costs incurred by a covered entity implementing this subsection (5) shall be reimbursed as an allowable cost under Section 43-13-116.

(g) If the results of an employee applicant's criminal history record check reveals no disqualifying event, then the covered entity shall, within two (2) weeks of the notification of no disqualifying event, provide the employee applicant with a notarized letter signed by the chief executive officer of the covered entity, or his or her authorized designee, confirming the

employee applicant's suitability for employment based on his or her criminal history record check. An employee applicant may use that letter for a period of two (2) years from the date of the letter to seek employment with any covered entity without the necessity of an additional criminal history record check. Any covered entity presented with the letter may rely on the letter with respect to an employee applicant's criminal background and is not required for a period of two (2) years from the date of the letter to conduct or have conducted a criminal history record check as required in this subsection (5).

(h) The licensing agency, the covered entity, and their agents, officers, employees, attorneys and representatives, shall be presumed to be acting in good faith for any employment decision or action taken under this subsection (5). The presumption of good faith may be overcome by a preponderance of the evidence in any civil action. No licensing agency, covered entity, nor their agents, officers, employees, attorneys and representatives shall be held liable in any employment decision or action based in whole or in part on compliance with or attempts to comply with the requirements of this subsection (5).

(i) The licensing agency shall promulgate regulations to implement this subsection (5).

(j) The provisions of this subsection (5) shall not apply to:

(i) Applicants and employees of the University of Mississippi Medical Center for whom criminal history record checks and fingerprinting are obtained in accordance with Section 37-115-41; or

(ii) Health care professional/vocational technical students for whom criminal history record checks and fingerprinting are obtained in accordance with Section 37-29-232.

(6) The State Board of Health shall promulgate rules, regulations and standards regarding the operation of adult foster care facilities.

SOURCES: Codes, 1942, § 6964-07; Laws, 1952, ch. 384, § 7; Laws, 1964, ch. 429, § 2; Laws, 1986, ch. 437, § 31; Laws, 1993, ch. 365, § 1; Laws, 2001, ch. 595, § 1; Laws, 2001, ch. 603, § 11; Laws, 2002, ch. 561, § 1; Laws, 2003, ch. 545, § 1; Laws, 2004, ch. 317, § 1; Laws, 2004, ch. 538, § 3; Laws, 2006, ch. 414, § 1; Laws, 2007, ch. 552, § 2; Laws, 2008, ch. 305, § 1; Laws, 2008, ch. 423, § 1; Laws, 2011, ch. 545, § 9, eff from and after July 1, 2011.

Editor's Note — In (5)(b), and (d), there are references to "vulnerable adult" and "vulnerable adults." The "Vulnerable Adult Act" was renamed the "Vulnerable Persons Act" by Laws of 2010, ch. 357 to change references to "vulnerable adult" to "vulnerable person."

Laws of 2010, ch. 505, § 14 provides:

"SECTION 14. (1) The Legislature makes the following findings:

"(a) Chronic diseases are among the most prevalent, costly and preventable of all health problems.

"(b) Screening tests are currently available that can detect heart disease, breast cancer, cervical cancer, colorectal cancer, prostate cancer and other chronic diseases early, when they can be most effectively treated, managed or controlled.

"(c) The risk factors for many chronic diseases can be addressed and reduced through education about those risk factors and the importance of actions that can be taken for prevention of chronic diseases.

"(d) People should partner with their health care providers to have their risk factors assessed, monitored and managed in accordance with national guidelines, and should be educated about the signs and symptoms of heart attack and stroke and the importance of getting help quickly at the onset of those symptoms.

"(e) Mississippi should have programs that are specifically designed to reduce the incidences of chronic diseases among our population.

"(2) The State Department of Health is authorized in its discretion to establish the WISEWOMAN pilot program and the WISEMAN pilot program, the purposes and goals of which are to reduce the incidences of certain chronic diseases among Mississippians through education, prevention and early screening and detection. The pilot program shall be conditioned upon the availability of funds obtained for such purpose from public or private sources. The focus of the WISEWOMAN pilot program shall be heart disease, stroke, breast cancer, cervical cancer and colorectal cancer in women, and the focus of the WISEMAN pilot program shall be heart disease, stroke, prostate cancer, colorectal cancer and diabetes in men. At a minimum, the WISEWOMAN and WISEMAN pilot programs shall:

"(a) Provide for education about healthy behaviors and how to reduce the risk factors for those chronic diseases;.

"(b) Provide for screening and testing to detect those chronic diseases early when they can be effectively treated, managed or controlled; and

"(b) Screening tests are currently available that can detect heart disease, breast cancer, cervical cancer, colorectal cancer, prostate cancer and other chronic diseases early, when they can be most effectively treated, managed or controlled.

"(c) Be directed toward those populations at greatest need and be based on a foundation of scientific evidence.

"(3) In implementing the WISEWOMAN and WISEMAN pilot programs, the department shall contract with public or private clinics or agencies that have demonstrated success in reducing incidences of those chronic diseases through education, prevention and early screening and detection.

"(4) The department shall seek and apply for grants from the Centers for Disease Control and Prevention and other public or private entities to obtain funding for the WISEWOMAN and WISEMAN pilot programs.

Laws of 2010, ch. 505, § 17, provides:

"SECTION 17. (1) The State Board of Health shall develop and make a report to the Public Health and Welfare Committees of the Senate and House of Representatives prior to the 2011 Regular Session of the Legislature with any necessary legislative recommendations on the following:

"(a) The definitions and standards relating to the licensure of 'personal care home,' 'assisted living facilities,' 'adult day care facilities' and 'psychiatric supervised housing facility' for the purposes of licensure purposes for institutions for the aged or infirm;

"(b) A determination as to whether the rules, regulations and standards adopted by the State Board of Health for personal care homes should be uniform for each of the classifications of personal care homes, but may vary based on the differences between the types of facilities in each classification.

"(2) A determination as to whether the rules, regulations and standards adopted by the State Board of Health for personal care homes should be uniform for each of the classifications of personal care homes, but may vary based on the differences between the types of facilities in each classification."

Amendment Notes — The 2011 amendment substituted "June 30, 2014" for "June 30, 2011" in (4)(d).

§ 43-11-27. Injunction.

Notwithstanding the existence or pursuit of any other remedy, the licensing agency may, in the manner provided by law, upon the advice of the Attorney General who, except as otherwise authorized in Section 7-5-39, shall represent the licensing agency in the proceedings, maintain an action in the name of the state for injunction or other process against any person to restrain or prevent the establishment, conduct, management or operation of an institution for the aged or infirm without a license under this chapter.

SOURCES: Codes, 1942, § 6964-14; Laws, 1952, ch. 384, § 14; Laws, 2012, ch. 546, § 16, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment inserted "except as otherwise authorized in Section 7-5-39" near the middle.

CHAPTER 13

Medical Assistance for the Aged; Medicaid

ARTICLE 3.

MEDICAID.

§ 43-13-101. Title of article.

Cross References — Eligibility for benefits under the Mississippi Children's Health Insurance Program Act, see § 41-86-15.

§ 43-13-103. Purpose.

Cross References — Eligibility for benefits under the Mississippi Children's Health Insurance Program Act, see § 41-86-15.

§ 43-13-105. Definitions.

When used in this article, the following definitions shall apply, unless the context requires otherwise:

(a) "Administering agency" means the Division of Medicaid in the Office of the Governor as created by this article.

(b) "Division" or "Division of Medicaid" means the Division of Medicaid in the Office of the Governor.

(c) "Medical assistance" means payment of part or all of the costs of medical and remedial care provided under the terms of this article and in accordance with provisions of Titles XIX and XXI of the Social Security Act, as amended.

(d) "Applicant" means a person who applies for assistance under Titles IV, XVI, XIX or XXI of the Social Security Act, as amended, and under the terms of this article.

(e) "Recipient" means a person who is eligible for assistance under Title XIX or XXI of the Social Security Act, as amended and under the terms of this article.

(f) "State health agency" means any agency, department, institution, board or commission of the State of Mississippi, except the University of Mississippi Medical School, which is supported in whole or in part by any public funds, including funds directly appropriated from the State Treasury, funds derived by taxes, fees levied or collected by statutory authority, or any other funds used by "state health agencies" derived from federal sources, when any funds available to such agency are expended either directly or indirectly in connection with, or in support of, any public health, hospital, hospitalization or other public programs for the preventive treatment or actual medical treatment of persons with a physical disability, mental illness or an intellectual disability.

(g) "Mississippi Medicaid Commission" or "Medicaid Commission," wherever they appear in the laws of the State of Mississippi, means the Division of Medicaid in the Office of the Governor.

SOURCES: Codes, 1942, § 7290-33; Laws, 1969, Ex Sess, ch. 37, § 3; Laws, 1980, ch. 508, § 4; Laws, 1984, ch. 488, § 40; Laws, 2000, ch. 301, § 2; Laws, 2010, ch. 476, § 70, eff from and after passage (approved Apr. 1, 2010).

Amendment Notes — The 2010 amendment in (f), substituted "means" for "shall mean," inserted "of Mississippi" preceding "Medical School" and substituted "with a physical disability, mental illness or an intellectual disability" for "who are physically or mentally ill or mentally retarded"; and substituted "means" for "shall mean" in (g).

Cross References — Eligibility for benefits under the Mississippi Children's Health Insurance Program Act, see § 41-86-15.

§ 43-13-107. Division of Medicaid created; director and other personnel; Medical Care Advisory Committee; Drug Use Review Board; Pharmacy and Therapeutics Committee [Repealed effective July 1, 2013].

(1) The Division of Medicaid is created in the Office of the Governor and established to administer this article and perform such other duties as are prescribed by law.

(2)(a) The Governor shall appoint a full-time executive director, with the advice and consent of the Senate, who shall be either (i) a physician with administrative experience in a medical care or health program, or (ii) a person holding a graduate degree in medical care administration, public health, hospital administration, or the equivalent, or (iii) a person holding a bachelor's degree in business administration or hospital administration, with at least ten (10) years' experience in management-level administration of Medicaid programs. The executive director shall be the official secretary and legal custodian of the records of the division; shall be the agent of the division for the purpose of receiving all service of process, summons and notices directed to the division; shall perform such other duties as the Governor may prescribe from time to time; and shall perform all other duties that are now or may be imposed upon him or her by law.

(b) The executive director shall serve at the will and pleasure of the Governor.

(c) The executive director shall, before entering upon the discharge of the duties of the office, take and subscribe to the oath of office prescribed by the Mississippi Constitution and shall file the same in the Office of the Secretary of State, and shall execute a bond in some surety company authorized to do business in the state in the penal sum of One Hundred Thousand Dollars ($100,000.00), conditioned for the faithful and impartial discharge of the duties of the office. The premium on the bond shall be paid as provided by law out of funds appropriated to the Division of Medicaid for contractual services.

(d) The executive director, with the approval of the Governor and subject to the rules and regulations of the State Personnel Board, shall employ such professional, administrative, stenographic, secretarial, clerical and technical assistance as may be necessary to perform the duties required in administering this article and fix the compensation for those persons, all in accordance with a state merit system meeting federal requirements. When the salary of the executive director is not set by law, that salary shall be set by the State Personnel Board. No employees of the Division of Medicaid shall be considered to be staff members of the immediate Office of the Governor; however, Section 25-9-107(c)(xv) shall apply to the executive director and other administrative heads of the division.

(3)(a) There is established a Medical Care Advisory Committee, which shall be the committee that is required by federal regulation to advise the Division of Medicaid about health and medical care services.

(b) The advisory committee shall consist of not less than eleven (11) members, as follows:

(i) The Governor shall appoint five (5) members, one (1) from each congressional district and one (1) from the state at large;

(ii) The Lieutenant Governor shall appoint three (3) members, one (1) from each Supreme Court district;

(iii) The Speaker of the House of Representatives shall appoint three (3) members, one (1) from each Supreme Court district.

All members appointed under this paragraph shall either be health care providers or consumers of health care services. One (1) member appointed by each of the appointing authorities shall be a board certified physician.

(c) The respective Chairmen of the House Medicaid Committee, the House Public Health and Human Services Committee, the House Appropriations Committee, the Senate Public Health and Welfare Committee and the Senate Appropriations Committee, or their designees, two (2) members of the State Senate appointed by the Lieutenant Governor and one (1) member of the House of Representatives appointed by the Speaker of the House, shall serve as ex officio nonvoting members of the advisory committee.

(d) In addition to the committee members required by paragraph (b), the advisory committee shall consist of such other members as are necessary to meet the requirements of the federal regulation applicable to the advisory committee, who shall be appointed as provided in the federal regulation.

(e) The chairmanship of the advisory committee shall be elected by the voting members of the committee annually and shall not serve more than two (2) consecutive years as chairman.

(f) The members of the advisory committee specified in paragraph (b) shall serve for terms that are concurrent with the terms of members of the Legislature, and any member appointed under paragraph (b) may be reappointed to the advisory committee. The members of the advisory committee specified in paragraph (b) shall serve without compensation, but shall receive reimbursement to defray actual expenses incurred in the performance of committee business as authorized by law. Legislators shall receive per diem and expenses, which may be paid from the contingent expense funds of their respective houses in the same amounts as provided for committee meetings when the Legislature is not in session.

(g) The advisory committee shall meet not less than quarterly, and advisory committee members shall be furnished written notice of the meetings at least ten (10) days before the date of the meeting.

(h) The executive director shall submit to the advisory committee all amendments, modifications and changes to the state plan for the operation of the Medicaid program, for review by the advisory committee before the amendments, modifications or changes may be implemented by the division.

(i) The advisory committee, among its duties and responsibilities, shall:

(i) Advise the division with respect to amendments, modifications and changes to the state plan for the operation of the Medicaid program;

(ii) Advise the division with respect to issues concerning receipt and disbursement of funds and eligibility for Medicaid;

(iii) Advise the division with respect to determining the quantity, quality and extent of medical care provided under this article;

(iv) Communicate the views of the medical care professions to the division and communicate the views of the division to the medical care professions;

(v) Gather information on reasons that medical care providers do not participate in the Medicaid program and changes that could be made in the program to encourage more providers to participate in the Medicaid program, and advise the division with respect to encouraging physicians and other medical care providers to participate in the Medicaid program;

(vi) Provide a written report on or before November 30 of each year to the Governor, Lieutenant Governor and Speaker of the House of Representatives.

(4)(a) There is established a Drug Use Review Board, which shall be the board that is required by federal law to:

(i) Review and initiate retrospective drug use, review including ongoing periodic examination of claims data and other records in order to identify patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care, among physicians, pharmacists and individuals receiving Medicaid benefits or associated with specific drugs or groups of drugs.

(ii) Review and initiate ongoing interventions for physicians and pharmacists, targeted toward therapy problems or individuals identified in the course of retrospective drug use reviews.

(iii) On an ongoing basis, assess data on drug use against explicit predetermined standards using the compendia and literature set forth in federal law and regulations.

(b) The board shall consist of not less than twelve (12) members appointed by the Governor, or his designee.

(c) The board shall meet at least quarterly, and board members shall be furnished written notice of the meetings at least ten (10) days before the date of the meeting.

(d) The board meetings shall be open to the public, members of the press, legislators and consumers. Additionally, all documents provided to board members shall be available to members of the Legislature in the same manner, and shall be made available to others for a reasonable fee for copying. However, patient confidentiality and provider confidentiality shall be protected by blinding patient names and provider names with numerical or other anonymous identifiers. The board meetings shall be subject to the Open Meetings Act (Sections 25-41-1 through 25-41-17). Board meetings conducted in violation of this section shall be deemed unlawful.

(5)(a) There is established a Pharmacy and Therapeutics Committee, which shall be appointed by the Governor, or his designee.

(b) The committee shall meet at least quarterly, and committee members shall be furnished written notice of the meetings at least ten (10) days before the date of the meeting.

(c) The committee meetings shall be open to the public, members of the press, legislators and consumers. Additionally, all documents provided to committee members shall be available to members of the Legislature in the same manner, and shall be made available to others for a reasonable fee for copying. However, patient confidentiality and provider confidentiality shall be protected by blinding patient names and provider names with numerical or other anonymous identifiers. The committee meetings shall be subject to the Open Meetings Act (Sections 25-41-1 through 25-41-17). Committee meetings conducted in violation of this section shall be deemed unlawful.

(d) After a thirty-day public notice, the executive director, or his or her designee, shall present the division's recommendation regarding prior approval for a therapeutic class of drugs to the committee. However, in circumstances where the division deems it necessary for the health and safety of Medicaid beneficiaries, the division may present to the committee its recommendations regarding a particular drug without a thirty-day public notice. In making that presentation, the division shall state to the committee the circumstances that precipitate the need for the committee to review the status of a particular drug without a thirty-day public notice. The committee may determine whether or not to review the particular drug under the circumstances stated by the division without a thirty-day public notice. If the committee determines to review the status of the particular drug, it shall make its recommendations to the division, after which the division shall file those recommendations for a thirty-day public comment under Section 25-43-7(1).

(e) Upon reviewing the information and recommendations, the committee shall forward a written recommendation approved by a majority of the committee to the executive director, or his or her designee. The decisions of the committee regarding any limitations to be imposed on any drug or its use for a specified indication shall be based on sound clinical evidence found in labeling, drug compendia, and peer reviewed clinical literature pertaining to use of the drug in the relevant population.

(f) Upon reviewing and considering all recommendations including recommendation s of the committee, comments, and data, the executive director shall make a final determination whether to require prior approval of a therapeutic class of drugs, or modify existing prior approval requirements for a therapeutic class of drugs.

(g) At least thirty (30) days before the executive director implements new or amended prior authorization decisions, written notice of the executive director's decision shall be provided to all prescribing Medicaid providers, all Medicaid enrolled pharmacies, and any other party who has requested the notification. However, notice given under Section 25-43-7(1) will substitute for and meet the requirement for notice under this subsection.

(h) Members of the committee shall dispose of matters before the committee in an unbiased and professional manner. If a matter being considered by the committee presents a real or apparent conflict of interest

for any member of the committee, that member shall disclose the conflict in writing to the committee chair and recuse himself or herself from any discussions and/or actions on the matter.

(6) This section shall stand repealed on July 1, 2013.

SOURCES: Codes, 1942, § 7290-34; Laws, 1969, Ex Sess, ch. 37, § 4; Laws, 1973, ch. 312, § 1; Laws, 1980, ch. 560, § 10; Laws, 1984, ch. 488, § 41; Laws, 2000, ch. 301, § 3; Laws, 2000, ch. 498, § 1; Laws, 2002, ch. 304, § 4; Laws, 2003, ch. 543, § 4; Laws, 2004, ch. 593, § 1; Laws, 2007, ch. 553, § 1 ; brought forward without change, Laws, 2008, ch. 360, § 1; Laws, 2009, 2nd Ex Sess, ch. 118, § 1; Laws, 2012, ch. 530, § 1, eff from and after passage (approved May 17, 2012.)

Amendment Notes — The 2012 amendment extended the repealer provision from "July 1, 2012" to "July 1, 2013" in (6).

Cross References — Eligibility for benefits under the Mississippi Children's Health Insurance Program Act, see § 41-86-15.

§ 43-13-111. Budgets of state health agencies.

Cross References — Eligibility for benefits under the Mississippi Children's Health Insurance Program Act, see § 41-86-15.

§ 43-13-113. Receipt and disbursement of funds; contingency plan; contracting for donated dental services program.

Cross References — Eligibility for benefits under the Mississippi Children's Health Insurance Program Act, see § 41-86-15.

§ 43-13-115. Persons entitled to receive Medicaid.

Cross References — Eligibility for benefits under the Mississippi Children's Health Insurance Program Act, see § 41-86-15.

§ 43-13-116.1. Asset verification program; data match system with financial institutions; authority of division to request and financial institution to provide additional financial information as needed to verify eligibility.

(1) For purposes of this section:

(a) "Financial institution" has the meaning given by Sections 81-3-1 and 81-12-3, and shall include, but not be limited to, credit unions, stock brokerages, public or private entities administering retirement, savings, annuities, life insurance and/or pension funds.

(b) "Account" means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account or money-market account.

(2) In accordance with Section 1940 of the federal Social Security Act (42 USCS Section 1396w), the Division of Medicaid shall implement an asset verification program requiring each applicant for or recipient of Medicaid

assistance on the basis of being aged, blind or disabled, to provide authorization by the applicant or recipient, their spouse, and by any other person whose resources are required by law to be disclosed to determine the eligibility of the applicant or recipient for Medicaid assistance, for the division to obtain from any financial institution financial records and information held by any such financial institution with respect to the applicant, recipient, spouse or such other person, as applicable, that the division determines are needed to verify the financial resources of the applicant, recipient or such other person in connection with a determination or redetermination with respect to eligibility for, or the amount or extent of, Medicaid assistance. Each aged, blind or disabled Medicaid applicant or recipient, their spouse, and any other applicable person described in this section shall provide authorization (as specified by 42 USCS Section 1396w(c)) to the division to obtain from any financial institution, any financial record, whenever the division determines that the record is needed in connection with a determination or redetermination of eligibility for Medicaid assistance.

(3)(a) In connection with the asset verification program, the division is authorized to enter into agreements with financial institutions doing business in the state:

(i) To develop and operate a data match system, using automated data exchanges, in which the division will provide to the financial institution, on a quarterly or more frequent basis, the name, social security number or other taxpayer identification number, and any other necessary identifying information for each applicant for or recipient of Medicaid assistance and for each other person whose resources are required to be disclosed to determine the eligibility of the applicant or recipient for Medicaid assistance; and

(ii) Provide for payment to the financial institution of the reasonable costs of the institution for conducting the data matches and for responding to other requests made under this section, in accordance with the cost reimbursement requirements of Section 1115(a) of the Federal Right to Financial Privacy Act, 12 USCS Section 3415, as amended.

(b) Any financial institution doing business in the State of Mississippi may enter into agreements with the division to engage in the data match system and also to disclose any accounts held by the institution on behalf of the persons so identified by the division and, if requested by the division, the account numbers, account balances, and all names and addresses and social security or other tax identification numbers on record for those accounts.

(4) When the operation of the data match system results in the location of an account of an applicant for or recipient of Medicaid assistance or a person whose resources are required to be disclosed to determine the eligibility of the applicant or recipient for Medicaid assistance, the division may request and the financial institution may provide any additional financial records and information held by the financial institution as the division determines are needed to establish, continue, modify or terminate eligibility for Medicaid assistance.

(5) A financial institution:

(a) Shall have no liability for failing to disclose to any account holder or depositor that the name of the person has been received from the division or that the financial institution has furnished financial records or information pertaining to the account holder or depositor to the division under this section;

(b) Shall have no liability for any delays, errors or omissions in conducting the data matches or in responding to other requests for records or information made under this section, which delays, errors or omissions result from circumstances beyond the control of the institution or from any unintentional, bona fide error, including, but not limited to, clerical or computer malfunction or programming error; and

(c) Shall be absolutely immune from any civil or criminal liability to any person under any contract, common law, statute or regulation for the disclosure to the division, or to any authorized contractor or agents thereof, of any information, accounts, assets, financial records or information under this article, the agreements referred to in subsection (4) of this section, or in response to any notice or request issued by the division or by any authorized contractors or agents thereof, or for any action or omission taken or omitted in good faith to comply with the requirements of this article.

SOURCES: Laws, 2012, ch. 434, § 1, eff from and after July 1, 2012.

Editor's Note — Laws of 2012, ch. 434, § 3, provides:

"SECTION 3. Not later than December 31, 2013, the Division of Medicaid shall report to the Legislature the financial institution participation rate in the data match system established under this act, the amount of the savings achieved by the division through the asset verification program established under this act, and all expenditures by the division in relation to the program, including reimbursement to financial institutions and payments to vendors, contractors and consultants associated with the program."

§ 43-13-117. Types of care and services for which financial assistance furnished [Repealed effective July 1, 2013; paragraph (A)(10) repealed effective July 1, 2013].

(A) Medicaid as authorized by this article shall include payment of part or all of the costs, at the discretion of the division, with approval of the Governor, of the following types of care and services rendered to eligible applicants who have been determined to be eligible for that care and services, within the limits of state appropriations and federal matching funds:

(1) Inpatient hospital services.

(a) The division shall allow thirty (30) days of inpatient hospital care annually for all Medicaid recipients. Medicaid recipients requiring transplants shall not have those days included in the transplant hospital stay count against the thirty-day limit for inpatient hospital care. Precertification of inpatient days must be obtained as required by the division.

(b) From and after July 1, 1994, the Executive Director of the Division of Medicaid shall amend the Mississippi Title XIX Inpatient Hospital Reimbursement Plan to remove the occupancy rate penalty from the calculation of the Medicaid Capital Cost Component utilized to determine total hospital costs allocated to the Medicaid program.

(c) Hospitals will receive an additional payment for the implantable programmable baclofen drug pump used to treat spasticity that is implanted on an inpatient basis. The payment pursuant to written invoice will be in addition to the facility's per diem reimbursement and will represent a reduction of costs on the facility's annual cost report, and shall not exceed Ten Thousand Dollars ($10,000.00) per year per recipient.

(d) The division is authorized to implement an All-Patient Refined-Diagnosis Related Groups (APR-DRG) reimbursement methodology for inpatient hospital services.

(e) No service benefits or reimbursement limitations in this section shall apply to payments under an APR-DRG or Ambulatory Payment Classification (APC) model or a managed care program or similar model described in subsection (H) of this section.

(2) Outpatient hospital services.

(a) Emergency services. The division shall allow six (6) medically necessary emergency room visits per beneficiary per fiscal year.

(b) Other outpatient hospital services. The division shall allow benefits for other medically necessary outpatient hospital services (such as chemotherapy, radiation, surgery and therapy), including outpatient services in a clinic or other facility that is not located inside the hospital, but that has been designated as an outpatient facility by the hospital, and that was in operation or under construction on July 1, 2009, provided that the costs and charges associated with the operation of the hospital clinic are included in the hospital's cost report. In addition, the Medicare thirty-five-mile rule will apply to those hospital clinics not located inside the hospital that are constructed after July 1, 2009. Where the same services are reimbursed as clinic services, the division may revise the rate or methodology of outpatient reimbursement to maintain consistency, efficiency, economy and quality of care.

(c) The division is authorized to implement an Ambulatory Payment Classification (APC) methodology for outpatient hospital services.

(d) No service benefits or reimbursement limitations in this section shall apply to payments under an APR-DRG or APC model or a managed care program or similar model described in subsection (H) of this section.

(3) Laboratory and x-ray services.

(4) Nursing facility services. The division shall not change reimbursement rates for nursing facilities from the level that rates were in effect on January 1, 2012, except that nursing facility rates will be adjusted by an add-on after trended costs are used by the division to increase the nursing facility bed assessment provided in Section 43-13-145(1).

(a) The division shall make full payment to nursing facilities for each day, not exceeding fifty-two (52) days per year, that a patient is absent

from the facility on home leave. Payment may be made for the following home leave days in addition to the fifty-two-day limitation: Christmas, the day before Christmas, the day after Christmas, Thanksgiving, the day before Thanksgiving and the day after Thanksgiving.

(b) From and after July 1, 1997, the division shall implement the integrated case-mix payment and quality monitoring system, which includes the fair rental system for property costs and in which recapture of depreciation is eliminated. The division may reduce the payment for hospital leave and therapeutic home leave days to the lower of the case-mix category as computed for the resident on leave using the assessment being utilized for payment at that point in time, or a case-mix score of 1.000 for nursing facilities, and shall compute case-mix scores of residents so that only services provided at the nursing facility are considered in calculating a facility's per diem.

(c) From and after July 1, 1997, all state-owned nursing facilities shall be reimbursed on a full reasonable cost basis.

(d) [Deleted]

(e) The division shall develop and implement, not later than January 1, 2001, a case-mix payment add-on determined by time studies and other valid statistical data that will reimburse a nursing facility for the additional cost of caring for a resident who has a diagnosis of Alzheimer's or other related dementia and exhibits symptoms that require special care. Any such case-mix add-on payment shall be supported by a determination of additional cost. The division shall also develop and implement as part of the fair rental reimbursement system for nursing facility beds, an Alzheimer's resident bed depreciation enhanced reimbursement system that will provide an incentive to encourage nursing facilities to convert or construct beds for residents with Alzheimer's or other related dementia.

(f) The division shall develop and implement an assessment process for long-term care services. The division may provide the assessment and related functions directly or through contract with the area agencies on aging.

The division shall apply for necessary federal waivers to assure that additional services providing alternatives to nursing facility care are made available to applicants for nursing facility care.

(5) Periodic screening and diagnostic services for individuals under age twenty-one (21) years as are needed to identify physical and mental defects and to provide health care treatment and other measures designed to correct or ameliorate defects and physical and mental illness and conditions discovered by the screening services, regardless of whether these services are included in the state plan. The division may include in its periodic screening and diagnostic program those discretionary services authorized under the federal regulations adopted to implement Title XIX of the federal Social Security Act, as amended. The division, in obtaining physical therapy services, occupational therapy services, and services for individuals with speech, hearing and language disorders, may enter into a cooperative

agreement with the State Department of Education for the provision of those services to handicapped students by public school districts using state funds that are provided from the appropriation to the Department of Education to obtain federal matching funds through the division. The division, in obtaining medical and mental health assessments, treatment, care and services for children who are in, or at risk of being put in, the custody of the Mississippi Department of Human Services may enter into a cooperative agreement with the Mississippi Department of Human Services for the provision of those services using state funds that are provided from the appropriation to the Department of Human Services to obtain federal matching funds through the division.

(6) Physician's services. The division shall allow twelve (12) physician visits annually. The division may develop and implement a different reimbursement model or schedule for physician's services provided by physicians based at an academic health care center and by physicians at rural health centers that are associated with an academic health care center. From and after January 1, 2010, all fees for physicians' services that are covered only by Medicaid shall be increased to ninety percent (90%) of the rate established on January 1, 2010, and as may be adjusted each July thereafter, under Medicare. The division may provide for a reimbursement rate for physician's services of up to one hundred percent (100%) of the rate established under Medicare for physician's services that are provided after the normal working hours of the physician, as determined in accordance with regulations of the division.

(7)(a) Home health services for eligible persons, not to exceed in cost the prevailing cost of nursing facility services, not to exceed twenty-five (25) visits per year. All home health visits must be precertified as required by the division.

(b) [Repealed]

(8) Emergency medical transportation services. On January 1, 1994, emergency medical transportation services shall be reimbursed at seventy percent (70%) of the rate established under Medicare (Title XVIII of the federal Social Security Act, as amended). "Emergency medical transportation services" shall mean, but shall not be limited to, the following services by a properly permitted ambulance operated by a properly licensed provider in accordance with the Emergency Medical Services Act of 1974 (Section 41-59-1 et seq.): (i) basic life support, (ii) advanced life support, (iii) mileage, (iv) oxygen, (v) intravenous fluids, (vi) disposable supplies, (vii) similar services.

(9)(a) Legend and other drugs as may be determined by the division.

The division shall establish a mandatory preferred drug list. Drugs not on the mandatory preferred drug list shall be made available by utilizing prior authorization procedures established by the division.

The division may seek to establish relationships with other states in order to lower acquisition costs of prescription drugs to include single source and innovator multiple source drugs or generic drugs. In addition, if allowed

by federal law or regulation, the division may seek to establish relationships with and negotiate with other countries to facilitate the acquisition of prescription drugs to include single source and innovator multiple source drugs or generic drugs, if that will lower the acquisition costs of those prescription drugs.

The division shall allow for a combination of prescriptions for single source and innovator multiple source drugs and generic drugs to meet the needs of the beneficiaries, not to exceed five (5) prescriptions per month for each noninstitutionalized Medicaid beneficiary, with not more than two (2) of those prescriptions being for single source or innovator multiple source drugs unless the single source or innovator multiple source drug is less expensive than the generic equivalent.

The executive director may approve specific maintenance drugs for beneficiaries with certain medical conditions, which may be prescribed and dispensed in three-month supply increments.

Drugs prescribed for a resident of a psychiatric residential treatment facility must be provided in true unit doses when available. The division may require that drugs not covered by Medicare Part D for a resident of a long-term care facility be provided in true unit doses when available. Those drugs that were originally billed to the division but are not used by a resident in any of those facilities shall be returned to the billing pharmacy for credit to the division, in accordance with the guidelines of the State Board of Pharmacy and any requirements of federal law and regulation. Drugs shall be dispensed to a recipient and only one (1) dispensing fee per month may be charged. The division shall develop a methodology for reimbursing for restocked drugs, which shall include a restock fee as determined by the division not exceeding Seven Dollars and Eighty-two Cents ($7.82).

The voluntary preferred drug list shall be expanded to function in the interim in order to have a manageable prior authorization system, thereby minimizing disruption of service to beneficiaries.

Except for those specific maintenance drugs approved by the executive director, the division shall not reimburse for any portion of a prescription that exceeds a thirty-one-day supply of the drug based on the daily dosage.

The division shall develop and implement a program of payment for additional pharmacist services, with payment to be based on demonstrated savings, but in no case shall the total payment exceed twice the amount of the dispensing fee.

All claims for drugs for dually eligible Medicare/Medicaid beneficiaries that are paid for by Medicare must be submitted to Medicare for payment before they may be processed by the division's online payment system.

The division shall develop a pharmacy policy in which drugs in tamper-resistant packaging that are prescribed for a resident of a nursing facility but are not dispensed to the resident shall be returned to the pharmacy and not billed to Medicaid, in accordance with guidelines of the State Board of Pharmacy.

The division shall develop and implement a method or methods by which the division will provide on a regular basis to Medicaid providers who are authorized to prescribe drugs, information about the costs to the Medicaid program of single source drugs and innovator multiple source drugs, and information about other drugs that may be prescribed as alternatives to those single source drugs and innovator multiple source drugs and the costs to the Medicaid program of those alternative drugs.

Notwithstanding any law or regulation, information obtained or maintained by the division regarding the prescription drug program, including trade secrets and manufacturer or labeler pricing, is confidential and not subject to disclosure except to other state agencies.

(b) Payment by the division for covered multisource drugs shall be limited to the lower of the upper limits established and published by the Centers for Medicare and Medicaid Services (CMS) plus a dispensing fee, or the estimated acquisition cost (EAC) as determined by the division, plus a dispensing fee, or the providers' usual and customary charge to the general public.

Payment for other covered drugs, other than multisource drugs with CMS upper limits, shall not exceed the lower of the estimated acquisition cost as determined by the division, plus a dispensing fee or the providers' usual and customary charge to the general public.

Payment for nonlegend or over-the-counter drugs covered by the division shall be reimbursed at the lower of the division's estimated shelf price or the providers' usual and customary charge to the general public.

The dispensing fee for each new or refill prescription, including nonlegend or over-the-counter drugs covered by the division, shall be not less than Three Dollars and Ninety-one Cents ($3.91), as determined by the division.

The division shall not reimburse for single source or innovator multiple source drugs if there are equally effective generic equivalents available and if the generic equivalents are the least expensive.

It is the intent of the Legislature that the pharmacists providers be reimbursed for the reasonable costs of filling and dispensing prescriptions for Medicaid beneficiaries.

(10)(a) Dental care that is an adjunct to treatment of an acute medical or surgical condition; services of oral surgeons and dentists in connection with surgery related to the jaw or any structure contiguous to the jaw or the reduction of any fracture of the jaw or any facial bone; and emergency dental extractions and treatment related thereto. On July 1, 2007, fees for dental care and surgery under authority of this paragraph (10) shall be reimbursed as provided in subparagraph (b). It is the intent of the Legislature that this rate revision for dental services will be an incentive designed to increase the number of dentists who actively provide Medicaid services. This dental services rate revision shall be known as the "James Russell Dumas Medicaid Dental Incentive Program."

The division shall annually determine the effect of this incentive by evaluating the number of dentists who are Medicaid providers, the number

who and the degree to which they are actively billing Medicaid, the geographic trends of where dentists are offering what types of Medicaid services and other statistics pertinent to the goals of this legislative intent. This data shall be presented to the Chair of the Senate Public Health and Welfare Committee and the Chair of the House Medicaid Committee.

(b) The Division of Medicaid shall establish a fee schedule, to be effective from and after July 1, 2007, for dental services. The schedule shall provide for a fee for each dental service that is equal to a percentile of normal and customary private provider fees, as defined by the Ingenix Customized Fee Analyzer Report, which percentile shall be determined by the division. The schedule shall be reviewed annually by the division and dental fees shall be adjusted to reflect the percentile determined by the division.

(c) For fiscal year 2008, the amount of state funds appropriated for reimbursement for dental care and surgery shall be increased by ten percent (10%) of the amount of state fund expenditures for that purpose for fiscal year 2007. For each of fiscal years 2009 and 2010, the amount of state funds appropriated for reimbursement for dental care and surgery shall be increased by ten percent (10%) of the amount of state fund expenditures for that purpose for the preceding fiscal year.

(d) The division shall establish an annual benefit limit of Two Thousand Five Hundred Dollars ($2,500.00) in dental expenditures per Medicaid-eligible recipient; however, a recipient may exceed the annual limit on dental expenditures provided in this paragraph with prior approval of the division.

(e) The division shall include dental services as a necessary component of overall health services provided to children who are eligible for services.

(f) This paragraph (10) shall stand repealed on July 1, 2013.

(11) Eyeglasses for all Medicaid beneficiaries who have (a) had surgery on the eyeball or ocular muscle that results in a vision change for which eyeglasses or a change in eyeglasses is medically indicated within six (6) months of the surgery and is in accordance with policies established by the division, or (b) one (1) pair every five (5) years and in accordance with policies established by the division. In either instance, the eyeglasses must be prescribed by a physician skilled in diseases of the eye or an optometrist, whichever the beneficiary may select.

(12) Intermediate care facility services.

(a) The division shall make full payment to all intermediate care facilities for the mentally retarded for each day, not exceeding eighty-four (84) days per year, that a patient is absent from the facility on home leave. Payment may be made for the following home leave days in addition to the eighty-four-day limitation: Christmas, the day before Christmas, the day after Christmas, Thanksgiving, the day before Thanksgiving and the day after Thanksgiving.

(b) All state-owned intermediate care facilities for the mentally retarded shall be reimbursed on a full reasonable cost basis.

(13) Family planning services, including drugs, supplies and devices, when those services are under the supervision of a physician or nurse practitioner.

(14) Clinic services. Such diagnostic, preventive, therapeutic, rehabilitative or palliative services furnished to an outpatient by or under the supervision of a physician or dentist in a facility that is not a part of a hospital but that is organized and operated to provide medical care to outpatients. Clinic services shall include any services reimbursed as outpatient hospital services that may be rendered in such a facility, including those that become so after July 1, 1991. On July 1, 1999, all fees for physicians' services reimbursed under authority of this paragraph (14) shall be reimbursed at ninety percent (90%) of the rate established on January 1, 1999, and as may be adjusted each July thereafter, under Medicare (Title XVIII of the federal Social Security Act, as amended). The division may develop and implement a different reimbursement model or schedule for physician's services provided by physicians based at an academic health care center and by physicians at rural health centers that are associated with an academic health care center. The division may provide for a reimbursement rate for physician's clinic services of up to one hundred percent (100%) of the rate established under Medicare for physician's services that are provided after the normal working hours of the physician, as determined in accordance with regulations of the division.

(15) Home- and community-based services for the elderly and disabled, as provided under Title XIX of the federal Social Security Act, as amended, under waivers, subject to the availability of funds specifically appropriated for that purpose by the Legislature.

(16) Mental health services. Approved therapeutic and case management services (a) provided by an approved regional mental health/intellectual disability center established under Sections 41-19-31 through 41-19-39, or by another community mental health service provider meeting the requirements of the Department of Mental Health to be an approved mental health/intellectual disability center if determined necessary by the Department of Mental Health, using state funds that are provided in the appropriation to the division to match federal funds, or (b) provided by a facility that is certified by the State Department of Mental Health to provide therapeutic and case management services, to be reimbursed on a fee for service basis, or (c) provided in the community by a facility or program operated by the Department of Mental Health. Any such services provided by a facility described in subparagraph (b) must have the prior approval of the division to be reimbursable under this section. After June 30, 1997, mental health services provided by regional mental health/intellectual disability centers established under Sections 41-19-31 through 41-19-39, or by hospitals as defined in Section 41-9-3(a) and/or their subsidiaries and divisions, or by psychiatric residential treatment facilities as defined in Section 43-11-1, or by another community mental health service provider meeting the requirements of the Department of Mental Health to be an approved mental

health/intellectual disability center if determined necessary by the Department of Mental Health, shall not be included in or provided under any capitated managed care pilot program provided for under paragraph (24) of this section.

(17) Durable medical equipment services and medical supplies. Precertification of durable medical equipment and medical supplies must be obtained as required by the division. The Division of Medicaid may require durable medical equipment providers to obtain a surety bond in the amount and to the specifications as established by the Balanced Budget Act of 1997.

(18)(a) Notwithstanding any other provision of this section to the contrary, as provided in the Medicaid state plan amendment or amendments as defined in Section 43-13-145(10), the division shall make additional reimbursement to hospitals that serve a disproportionate share of low-income patients and that meet the federal requirements for those payments as provided in Section 1923 of the federal Social Security Act and any applicable regulations. It is the intent of the Legislature that the division shall draw down all available federal funds allotted to the state for disproportionate share hospitals. However, from and after January 1, 1999, public hospitals participating in the Medicaid disproportionate share program may be required to participate in an intergovernmental transfer program as provided in Section 1903 of the federal Social Security Act and any applicable regulations.

(b) The division shall establish a Medicare Upper Payment Limits Program, as defined in Section 1902(a)(30) of the federal Social Security Act and any applicable federal regulations, for hospitals, and may establish a Medicare Upper Payment Limits Program for nursing facilities. The division shall assess each hospital and, if the program is established for nursing facilities, shall assess each nursing facility, for the sole purpose of financing the state portion of the Medicare Upper Payment Limits Program. The hospital assessment shall be as provided in Section 43-13-145(4)(a) and the nursing facility assessment, if established, shall be based on Medicaid utilization or other appropriate method consistent with federal regulations. The assessment will remain in effect as long as the state participates in the Medicare Upper Payment Limits Program. As provided in the Medicaid state plan amendment or amendments as defined in Section 43-13-145(10), the division shall make additional reimbursement to hospitals and, if the program is established for nursing facilities, shall make additional reimbursement to nursing facilities, for the Medicare Upper Payment Limits, as defined in Section 1902(a)(30) of the federal Social Security Act and any applicable federal regulations.

(19)(a) Perinatal risk management services. The division shall promulgate regulations to be effective from and after October 1, 1988, to establish a comprehensive perinatal system for risk assessment of all pregnant and infant Medicaid recipients and for management, education and follow-up for those who are determined to be at risk. Services to be performed include case management, nutrition assessment/counseling, psychosocial assessment/counseling and health education.

(b) Early intervention system services. The division shall cooperate with the State Department of Health, acting as lead agency, in the development and implementation of a statewide system of delivery of early intervention services, under Part C of the Individuals with Disabilities Education Act (IDEA). The State Department of Health shall certify annually in writing to the executive director of the division the dollar amount of state early intervention funds available that will be utilized as a certified match for Medicaid matching funds. Those funds then shall be used to provide expanded targeted case management services for Medicaid eligible children with special needs who are eligible for the state's early intervention system. Qualifications for persons providing service coordination shall be determined by the State Department of Health and the Division of Medicaid.

(20) Home- and community-based services for physically disabled approved services as allowed by a waiver from the United States Department of Health and Human Services for home- and community-based services for physically disabled people using state funds that are provided from the appropriation to the State Department of Rehabilitation Services and used to match federal funds under a cooperative agreement between the division and the department, provided that funds for these services are specifically appropriated to the Department of Rehabilitation Services.

(21) Nurse practitioner services. Services furnished by a registered nurse who is licensed and certified by the Mississippi Board of Nursing as a nurse practitioner, including, but not limited to, nurse anesthetists, nurse midwives, family nurse practitioners, family planning nurse practitioners, pediatric nurse practitioners, obstetrics-gynecology nurse practitioners and neonatal nurse practitioners, under regulations adopted by the division. Reimbursement for those services shall not exceed ninety percent (90%) of the reimbursement rate for comparable services rendered by a physician. The division may provide for a reimbursement rate for nurse practitioner services of up to one hundred percent (100%) of the reimbursement rate for comparable services rendered by a physician for nurse practitioner services that are provided after the normal working hours of the nurse practitioner, as determined in accordance with regulations of the division.

(22) Ambulatory services delivered in federally qualified health centers, rural health centers and clinics of the local health departments of the State Department of Health for individuals eligible for Medicaid under this article based on reasonable costs as determined by the division.

(23) Inpatient psychiatric services. Inpatient psychiatric services to be determined by the division for recipients under age twenty-one (21) that are provided under the direction of a physician in an inpatient program in a licensed acute care psychiatric facility or in a licensed psychiatric residential treatment facility, before the recipient reaches age twenty-one (21) or, if the recipient was receiving the services immediately before he or she reached age twenty-one (21), before the earlier of the date he or she no longer requires the services or the date he or she reaches age twenty-two (22), as

provided by federal regulations. Precertification of inpatient days and residential treatment days must be obtained as required by the division. From and after July 1, 2009, all state-owned and state-operated facilities that provide inpatient psychiatric services to persons under age twenty-one (21) who are eligible for Medicaid reimbursement shall be reimbursed for those services on a full reasonable cost basis.

(24) [Deleted]

(25) [Deleted]

(26) Hospice care. As used in this paragraph, the term "hospice care" means a coordinated program of active professional medical attention within the home and outpatient and inpatient care that treats the terminally ill patient and family as a unit, employing a medically directed interdisciplinary team. The program provides relief of severe pain or other physical symptoms and supportive care to meet the special needs arising out of physical, psychological, spiritual, social and economic stresses that are experienced during the final stages of illness and during dying and bereavement and meets the Medicare requirements for participation as a hospice as provided in federal regulations.

(27) Group health plan premiums and cost sharing if it is cost-effective as defined by the United States Secretary of Health and Human Services.

(28) Other health insurance premiums that are cost-effective as defined by the United States Secretary of Health and Human Services. Medicare eligible must have Medicare Part B before other insurance premiums can be paid.

(29) The Division of Medicaid may apply for a waiver from the United States Department of Health and Human Services for home- and community-based services for developmentally disabled people using state funds that are provided from the appropriation to the State Department of Mental Health and/or funds transferred to the department by a political subdivision or instrumentality of the state and used to match federal funds under a cooperative agreement between the division and the department, provided that funds for these services are specifically appropriated to the Department of Mental Health and/or transferred to the department by a political subdivision or instrumentality of the state.

(30) Pediatric skilled nursing services for eligible persons under twenty-one (21) years of age.

(31) Targeted case management services for children with special needs, under waivers from the United States Department of Health and Human Services, using state funds that are provided from the appropriation to the Mississippi Department of Human Services and used to match federal funds under a cooperative agreement between the division and the department.

(32) Care and services provided in Christian Science Sanatoria listed and certified by the Commission for Accreditation of Christian Science Nursing Organizations/Facilities, Inc., rendered in connection with treatment by prayer or spiritual means to the extent that those services are

subject to reimbursement under Section 1903 of the federal Social Security Act.

(33) Podiatrist services.

(34) Assisted living services as provided through home- and community-based services under Title XIX of the federal Social Security Act, as amended, subject to the availability of funds specifically appropriated for that purpose by the Legislature.

(35) Services and activities authorized in Sections 43-27-101 and 43-27-103, using state funds that are provided from the appropriation to the Mississippi Department of Human Services and used to match federal funds under a cooperative agreement between the division and the department.

(36) Nonemergency transportation services for Medicaid-eligible persons, to be provided by the Division of Medicaid. The division may contract with additional entities to administer nonemergency transportation services as it deems necessary. All providers shall have a valid driver's license, vehicle inspection sticker, valid vehicle license tags and a standard liability insurance policy covering the vehicle. The division may pay providers a flat fee based on mileage tiers, or in the alternative, may reimburse on actual miles traveled. The division may apply to the Center for Medicare and Medicaid Services (CMS) for a waiver to draw federal matching funds for nonemergency transportation services as a covered service instead of an administrative cost. The PEER Committee shall conduct a performance evaluation of the nonemergency transportation program to evaluate the administration of the program and the providers of transportation services to determine the most cost-effective ways of providing nonemergency transportation services to the patients served under the program. The performance evaluation shall be completed and provided to the members of the Senate Public Health and Welfare Committee and the House Medicaid Committee not later than January 15, 2008.

(37) [Deleted]

(38) Chiropractic services. A chiropractor's manual manipulation of the spine to correct a subluxation, if x-ray demonstrates that a subluxation exists and if the subluxation has resulted in a neuromusculoskeletal condition for which manipulation is appropriate treatment, and related spinal x-rays performed to document these conditions. Reimbursement for chiropractic services shall not exceed Seven Hundred Dollars ($700.00) per year per beneficiary.

(39) Dually eligible Medicare/Medicaid beneficiaries. The division shall pay the Medicare deductible and coinsurance amounts for services available under Medicare, as determined by the division. From and after July 1, 2009, the division shall reimburse crossover claims for inpatient hospital services and crossover claims covered under Medicare Part B in the same manner that was in effect on January 1, 2008, unless specifically authorized by the Legislature to change this method.

(40) [Deleted]

(41) Services provided by the State Department of Rehabilitation Services for the care and rehabilitation of persons with spinal cord injuries

or traumatic brain injuries, as allowed under waivers from the United States Department of Health and Human Services, using up to seventy-five percent (75%) of the funds that are appropriated to the Department of Rehabilitation Services from the Spinal Cord and Head Injury Trust Fund established under Section 37-33-261 and used to match federal funds under a cooperative agreement between the division and the department.

(42) Notwithstanding any other provision in this article to the contrary, the division may develop a population health management program for women and children health services through the age of one (1) year. This program is primarily for obstetrical care associated with low birth weight and preterm babies. The division may apply to the federal Centers for Medicare and Medicaid Services (CMS) for a Section 1115 waiver or any other waivers that may enhance the program. In order to effect cost savings, the division may develop a revised payment methodology that may include at-risk capitated payments, and may require member participation in accordance with the terms and conditions of an approved federal waiver.

(43) The division shall provide reimbursement, according to a payment schedule developed by the division, for smoking cessation medications for pregnant women during their pregnancy and other Medicaid-eligible women who are of child-bearing age.

(44) Nursing facility services for the severely disabled.

(a) Severe disabilities include, but are not limited to, spinal cord injuries, closed head injuries and ventilator dependent patients.

(b) Those services must be provided in a long-term care nursing facility dedicated to the care and treatment of persons with severe disabilities.

(45) Physician assistant services. Services furnished by a physician assistant who is licensed by the State Board of Medical Licensure and is practicing with physician supervision under regulations adopted by the board, under regulations adopted by the division. Reimbursement for those services shall not exceed ninety percent (90%) of the reimbursement rate for comparable services rendered by a physician. The division may provide for a reimbursement rate for physician assistant services of up to one hundred percent (100%) or the reimbursement rate for comparable services rendered by a physician for physician assistant services that are provided after the normal working hours of the physician assistant, as determined in accordance with regulations of the division.

(46) The division shall make application to the federal Centers for Medicare and Medicaid Services (CMS) for a waiver to develop and provide services for children with serious emotional disturbances as defined in Section 43-14-1(1), which may include home- and community-based services, case management services or managed care services through mental health providers certified by the Department of Mental Health. The division may implement and provide services under this waivered program only if funds for these services are specifically appropriated for this purpose by the Legislature, or if funds are voluntarily provided by affected agencies.

(47)(a) Notwithstanding any other provision in this article to the contrary, the division may develop and implement disease management programs for individuals with high-cost chronic diseases and conditions, including the use of grants, waivers, demonstrations or other projects as necessary.

(b) Participation in any disease management program implemented under this paragraph (47) is optional with the individual. An individual must affirmatively elect to participate in the disease management program in order to participate, and may elect to discontinue participation in the program at any time.

(48) Pediatric long-term acute care hospital services.

(a) Pediatric long-term acute care hospital services means services provided to eligible persons under twenty-one (21) years of age by a freestanding Medicare-certified hospital that has an average length of inpatient stay greater than twenty-five (25) days and that is primarily engaged in providing chronic or long-term medical care to persons under twenty-one (21) years of age.

(b) The services under this paragraph (48) shall be reimbursed as a separate category of hospital services.

(49) The division shall establish copayments and/or coinsurance for all Medicaid services for which copayments and/or coinsurance are allowable under federal law or regulation, and shall set the amount of the copayment and/or coinsurance for each of those services at the maximum amount allowable under federal law or regulation.

(50) Services provided by the State Department of Rehabilitation Services for the care and rehabilitation of persons who are deaf and blind, as allowed under waivers from the United States Department of Health and Human Services to provide home- and community-based services using state funds that are provided from the appropriation to the State Department of Rehabilitation Services or if funds are voluntarily provided by another agency.

(51) Upon determination of Medicaid eligibility and in association with annual redetermination of Medicaid eligibility, beneficiaries shall be encouraged to undertake a physical examination that will establish a base-line level of health and identification of a usual and customary source of care (a medical home) to aid utilization of disease management tools. This physical examination and utilization of these disease management tools shall be consistent with current United States Preventive Services Task Force or other recognized authority recommendations.

For persons who are determined ineligible for Medicaid, the division will provide information and direction for accessing medical care and services in the area of their residence.

(52) Notwithstanding any provisions of this article, the division may pay enhanced reimbursement fees related to trauma care, as determined by the division in conjunction with the State Department of Health, using funds appropriated to the State Department of Health for trauma care and services

and used to match federal funds under a cooperative agreement between the division and the State Department of Health. The division, in conjunction with the State Department of Health, may use grants, waivers, demonstrations, or other projects as necessary in the development and implementation of this reimbursement program.

(53) Targeted case management services for high-cost beneficiaries shall be developed by the division for all services under this section.

(54) Adult foster care services pilot program. Social and protective services on a pilot program basis in an approved foster care facility for vulnerable adults who would otherwise need care in a long-term care facility, to be implemented in an area of the state with the greatest need for such program, under the Medicaid Waivers for the Elderly and Disabled program or an assisted living waiver. The division may use grants, waivers, demonstrations or other projects as necessary in the development and implementation of this adult foster care services pilot program.

(55) Therapy services. The plan of care for therapy services may be developed to cover a period of treatment for up to six (6) months, but in no event shall the plan of care exceed a six-month period of treatment. The projected period of treatment must be indicated on the initial plan of care and must be updated with each subsequent revised plan of care. Based on medical necessity, the division shall approve certification periods for less than or up to six (6) months, but in no event shall the certification period exceed the period of treatment indicated on the plan of care. The appeal process for any reduction in therapy services shall be consistent with the appeal process in federal regulations.

(56) Prescribed pediatric extended care centers services for medically dependent or technologically dependent children with complex medical conditions that require continual care as prescribed by the child's attending physician, as determined by the division.

(B) Notwithstanding any other provision of this article to the contrary, the division shall reduce the rate of reimbursement to providers for any service provided under this section by five percent (5%) of the allowed amount for that service. However, the reduction in the reimbursement rates required by this subsection (B) shall not apply to inpatient hospital services, nursing facility services, intermediate care facility services, psychiatric residential treatment facility services, pharmacy services provided under subsection (A) (9) of this section, or any service provided by the University of Mississippi Medical Center or a state agency, a state facility or a public agency that either provides its own state match through intergovernmental transfer or certification of funds to the division, or a service for which the federal government sets the reimbursement methodology and rate. From and after January 1, 2010, the reduction in the reimbursement rates required by this subsection (B) shall not apply to physicians' services. In addition, the reduction in the reimbursement rates required by this subsection (B) shall not apply to case management services and home-delivered meals provided under the home- and community-based services program for the elderly and disabled by a planning and

development district (PDD). Planning and development districts participating in the home- and community-based services program for the elderly and disabled as case management providers shall be reimbursed for case management services at the maximum rate approved by the Centers for Medicare and Medicaid Services (CMS).

(C) The division may pay to those providers who participate in and accept patient referrals from the division's emergency room redirection program a percentage, as determined by the division, of savings achieved according to the performance measures and reduction of costs required of that program. Federally qualified health centers may participate in the emergency room redirection program, and the division may pay those centers a percentage of any savings to the Medicaid program achieved by the centers' accepting patient referrals through the program, as provided in this subsection (C).

(D) Notwithstanding any provision of this article, except as authorized in the following subsection and in Section 43-13-139, neither (a) the limitations on quantity or frequency of use of or the fees or charges for any of the care or services available to recipients under this section, nor (b) the payments, payment methodology as provided below in this subsection (D), or rates of reimbursement to providers rendering care or services authorized under this section to recipients, may be increased, decreased or otherwise changed from the levels in effect on July 1, 1999, unless they are authorized by an amendment to this section by the Legislature. However, the restriction in this subsection shall not prevent the division from changing the payments, payment methodology as provided below in this subsection (D), or rates of reimbursement to providers without an amendment to this section whenever those changes are required by federal law or regulation, or whenever those changes are necessary to correct administrative errors or omissions in calculating those payments or rates of reimbursement. The prohibition on any changes in payment methodology provided in this subsection (D) shall apply only to payment methodologies used for determining the rates of reimbursement for inpatient hospital services, outpatient hospital services, nursing facility services, and/or pharmacy services, except as required by federal law, and the federally mandated rebasing of rates as required by the Centers for Medicare and Medicaid Services (CMS) shall not be considered payment methodology for purposes of this subsection (D). No service benefits or reimbursement limitations in this section shall apply to payments under an APR-DRG or APC model or a managed care program or similar model described in subsection (H) of this section.

(E) Notwithstanding any provision of this article, no new groups or categories of recipients and new types of care and services may be added without enabling legislation from the Mississippi Legislature, except that the division may authorize those changes without enabling legislation when the addition of recipients or services is ordered by a court of proper authority.

(F) The executive director shall keep the Governor advised on a timely basis of the funds available for expenditure and the projected expenditures. If current or projected expenditures of the division are reasonably anticipated to

exceed the amount of funds appropriated to the division for any fiscal year, the Governor, after consultation with the executive director, shall discontinue any or all of the payment of the types of care and services as provided in this section that are deemed to be optional services under Title XIX of the federal Social Security Act, as amended, and when necessary, shall institute any other cost containment measures on any program or programs authorized under the article to the extent allowed under the federal law governing that program or programs. However, the Governor shall not be authorized to discontinue or eliminate any service under this section that is mandatory under federal law, or to discontinue or eliminate, or adjust income limits or resource limits for, any eligibility category or group under Section 43-13-115. Beginning in fiscal year 2010 and in fiscal years thereafter, when Medicaid expenditures are projected to exceed funds available for any quarter in the fiscal year, the division shall submit the expected shortfall information to the PEER Committee, which shall review the computations of the division and report its findings to the Legislative Budget Office within thirty (30) days of such notification by the division, and not later than January 7 in any year. If expenditure reductions or cost containments are implemented, the Governor may implement a maximum amount of state share expenditure reductions to providers, of which hospitals will be responsible for twenty-five percent (25%) of provider reductions as follows: in fiscal year 2010, the maximum amount shall be Twenty-four Million Dollars ($24,000,000.00); in fiscal year 2011, the maximum amount shall be Thirty-two Million Dollars ($32,000,000.00); and in fiscal year 2012 and thereafter, the maximum amount shall be Forty Million Dollars ($40,000,000.00). However, instead of implementing cuts, the hospital share shall be in the form of an additional assessment not to exceed Ten Million Dollars ($10,000,000.00) as provided in Section 43-13-145(4)(a)(ii). If Medicaid expenditures are projected to exceed the amount of funds appropriated to the division in any fiscal year in excess of the expenditure reductions to providers, then funds shall be transferred by the State Fiscal Officer from the Health Care Trust Fund into the Health Care Expendable Fund and to the Governor's Office, Division of Medicaid, from the Health Care Expendable Fund, in the amount and at such time as requested by the Governor to reconcile the deficit. If the cost containment measures described above have been implemented and there are insufficient funds in the Health Care Trust Fund to reconcile any remaining deficit in any fiscal year, the Governor shall institute any other additional cost containment measures on any program or programs authorized under this article to the extent allowed under federal law. Hospitals shall be responsible for twenty-five percent (25%) of any additional imposed provider cuts. However, instead of implementing hospital expenditure reductions, the hospital reductions shall be in the form of an additional assessment not to exceed twenty-five percent (25%) of provider expenditure reductions as provided in Section 43-13-145(4)(a)(ii). It is the intent of the Legislature that the expenditures of the division during any fiscal year shall not exceed the amounts appropriated to the division for that fiscal year.

(G) Notwithstanding any other provision of this article, it shall be the duty of each nursing facility, intermediate care facility for the mentally

retarded, psychiatric residential treatment facility, and nursing facility for the severely disabled that is participating in the Medicaid program to keep and maintain books, documents and other records as prescribed by the Division of Medicaid in substantiation of its cost reports for a period of three (3) years after the date of submission to the Division of Medicaid of an original cost report, or three (3) years after the date of submission to the Division of Medicaid of an amended cost report.

(H)(1) Notwithstanding any other provision of this article, the division is authorized to implement (a) a managed care program, (b) a coordinated care program, (c) a coordinated care organization program, (d) a health maintenance organization program, (e) a patient-centered medical home program, (f) an accountable care organization program, or (g) any combination of the above programs. Managed care programs, coordinated care programs, coordinated care organization programs, health maintenance organization programs, patient-centered medical home programs, accountable care organization programs, or any combination of the above programs or other similar programs implemented by the division under this section shall be limited to a maximum of forty-five percent (45%) of all Medicaid beneficiaries, and the division is authorized to enroll categories of beneficiaries in such program(s) as long as the forty-five percent (45%) limitation is not exceeded in the aggregate. As a condition for the approval of any program under this paragraph (H) (1), the division shall require that no program may:

(a) Pay providers at a rate that is less than the Medicaid All-Patient Refined-Diagnosis Related Groups (APR-DRG) reimbursement rate;

(b) Override the medical decisions of hospital physicians or staff regarding patients admitted to a hospital. This restriction (b) does not prohibit prior authorization for nonemergency hospital visitation;

(c) Result in any reduction in Medicare Upper Payment Limits (UPL) payments to hospital providers in the aggregate because of the program;

(d) Pay providers at a rate that is less than the normal Medicaid reimbursement rate;

(e) Implement a prior authorization program for prescription drugs that is more stringent than the prior authorization processes used by the division in its administration of the Medicaid program;

(f) Implement a policy that does not comply with the prescription drugs payment requirements established in subsection (A)(9) of this section;

(g) Implement a preferred drug list that is more stringent than the mandatory preferred drug list established by the division under subsection (A)(9) of this section;

(h) Implement a policy which denies beneficiaries with hemophilia access to the federally funded hemophilia treatment centers as part of the Medicaid Managed Care network of providers.

(2) All health maintenance organizations, coordinated care organizations or other organizations paid for services on a capitated basis by the division under any managed care program or coordinated care program

implemented by the division under this section shall reimburse all providers in those organizations at rates no lower than those provided under this section for beneficiaries who are not participating in those programs.

(3) No health maintenance organization, coordinated care organization or other organization paid for services on a capitated basis by the division under any managed care program or coordinated care program implemented by the division under this section shall require its providers or beneficiaries to use any pharmacy that ships, mails or delivers prescription drugs or legend drugs or devices.

(I) [Deleted]

(J) There shall be no cuts in inpatient and outpatient hospital payments, or allowable days or volumes, as long as the hospital assessment provided in Section 43-13-145 is in effect. This subsection (J) shall not apply to decreases in payments that are a result of: reduced hospital admissions, audits or payments under the APR-DRG or APC models, or a managed care program or similar model described in subsection G of this section (G).

(K) This section shall stand repealed on July 1, 2013.

SOURCES: Codes, 1942, § 7290-39; Laws, 1969, Ex Sess, ch. 37, § 9; Laws, 1972, ch. 319, § 1; Laws, 1973, ch. 312, § 2; Laws, 1978, ch. 489, § 2; Laws, 1980, ch. 504; Laws, 1980, ch. 508, § 5; Laws, 1981, ch. 355, § 1; Laws, 1982, ch. 471; Laws, 1984, ch. 488, § 48; Laws, 1985, ch. 471; Laws, 1986, ch. 437, § 3; Laws, 1987, ch. 513, § 2; Laws, 1988, ch. 390; Laws, 1988, ch. 513; Laws, 1989, ch. 527, § 5; Laws, 1990, ch. 548, § 2; Laws, 1991, ch. 579, § 2; Laws, 1992, ch. 487, § 2; Laws, 1993, ch. 388, § 5; Laws, 1993, ch. 609, § 3; Laws, 1994, ch. 649, § 2; Laws, 1995, ch. 614, § 2; Laws, 1996, ch. 518, § 1; Laws, 1997, ch. 380, § 1; Laws, 1997, ch. 587, § 6; Laws, 1998, ch. 377, § 1; Laws, 1999, ch. 467, § 1; Laws, 1999, ch. 477, § 2; Laws, 1999, ch. 495, § 1; Laws, 1999, ch. 593, § 1; Laws, 2000, ch. 301, § 8; Laws, 2000, ch. 328, § 1; Laws, 2000, ch. 571, § 1; Laws, 2001, ch. 305, § 1; Laws, 2001, ch. 385, § 1; Laws, 2001, ch. 453, § 1; Laws, 2001, ch. 594, § 2; Laws, 2002, ch. 304, § 1; Laws, 2002, ch. 454, § 1; Laws, 2002, ch. 636B, § 1; Laws, 2003, ch. 543, § 3; Laws, 2004, ch. 593, § 3; Laws, 2005, ch. 470, § 2; Laws, 2007, ch. 552, § 4; Laws, 2007, ch. 553, § 2; Laws, 2008, ch. 360, § 2; Laws, 2009, 2nd Ex Sess, ch. 118, § 2; Laws, 2010, ch. 476, § 71; Laws, 2012, ch. 524, § 13; Laws, 2012, ch. 530, § 2, eff from and after passage (approved May 17, 2012.)

Joint Legislative Committee Note — Section 2 of Chapter 530, Laws of 2012, effective upon passage (approved May 17, 2012), amended this section. Section 13 of Chapter 524, Laws of 2012, effective upon passage (approved May 16, 2012), also amended this section. As set out above, this section reflects the language of Section 2 of Chapter 530, Laws of 2012, which contains language that specifically provides that it supersedes § 43-13-117 as amended by Laws of 2012, ch. 524.

Editor's Note — Chapter 118 of the Second Extraordinary Session of 2009 was effective on July 1, 2009, but the amendments to this section were contingent upon the effectuation of the hospital assessment provided for in Section 43-13-145(4). Section 43-13-145(4)(f) [in the first version of the section as it appeared in Laws of 2009, 2nd Ex Session, Ch. 118, § 3] provides that the hospital assessment will not take effect if the Centers for Medicare and Medicaid Services (CMS) does not approve the Division of Medicaid's 2009 Medicaid State Plan Amendment for its methodology for Disproportionate Share Hospital (DSH) and inpatient Medicare Upper Payment Limits (UPL) payments to hospitals. CMS approved the State Plan Amendment on March 9, 2010,

and the hospital assessment then became effective, so the amendments to this section by Chapter 118 of the Second Extraordinary Session of 2009 became effective on March 9, 2010.

In (A)(54), in both versions of the section, there are references to "vulnerable adults." The "Vulnerable Adult Act" was renamed the "Vulnerable Persons Act" by Laws of 2010, ch. 357 to change references to "vulnerable adult" to "vulnerable person."

Laws of 2012, ch. 530, § 5, provides:

"SECTION 5. (1) The Division of Medicaid shall develop proposals for the following:

"(a) The division shall develop a plan for the APR-DRG reimbursement methodology which increases such payments in order to reduce or eliminate Medicare Upper Payment Limits (UPL) program payments;

"(b) The division shall develop a plan to replace the existing hospital assessment provided in Section 43-13-145 with other possible revenue systems, including the possibility of a net inpatient revenue assessment;

"(c) The division shall develop a plan providing revisions to the current reimbursement methodology for prescription drugs.

"(d) The division shall develop a plan providing revisions to the current reimbursement methodology for nursing facility services.

"(2) The division shall not implement these plans, but shall submit the plans to the Public Health and Welfare Committee of the Senate and the Medicaid Committee of the House no later than October 15, 2012, including necessary legislative recommendations."

Amendment Notes — The 2010 amendment, in (A)(5), inserted "treatment, care, and services"; four times substituted "mental health/intellectual disability" for "mental health/retardation" in (A)(16).

The first 2012 amendment (ch. 524), added (A)(56)(d) and extended the repealer provision in (K) from "2012" to "2013."

The second 2012 amendment (ch. 530), added (A)(1)(d) and (e), (A)(2)(c) and (d), (A)(56); and added the last sentence of (A)(4), (A)(6), (A)(14)(A), (A)(21), (A)(45), (D) and (J); deleted (A)(4)(d) and rewrote (A)(16)(a) and (H)(1); deleted the second sentence in (A)(6), which provided that fees for physicians services only covered under medicaid would be reimbursed at 90% of the established rate; and added the last sentence of (6); and added "unless the single source or innovator multiple source drug is less expensive than the gereric equivalent" at the end of the third paragraph of (A)(9)(a); and substituted "July 1, 2013" for "July 1, 2012" in (A)(10)(f); and rewrote (H) and (J).

JUDICIAL DECISIONS

1. In general.

Pharmacy reimbursement rule promulgated by the Division of Medicaid (DOM), implementing a State Maximum Allowable Cost (SMAC) program for calculating the estimated acquisition cost (EAC) for certain generic drugs, ran afoul of Miss. Code Ann. § 43-13-117 because it altered the way in which Medicaid providers were reimbursed without prior legislative approval. Div. of Medicaid v. Miss. Indep. Pharms. Ass'n, 20 So. 3d 1236 (Miss. 2009).

Because the Mississippi Division of Medicaid's State Plan Amendment 2006-006 conflicted with the statutory requirement in Miss. Code Ann. § 43-13-117 that a private nursing facilities for the severely disabled be reimbursed as a separate category of nursing facility, the amendment was void and of no effect. Accordingly, the chancery court's decision which affirmed the DOM's decision was revered and the case was remanded. Miss. Methodist Hosp. & Rehab. Ctr., Inc. v. Miss. Div. of Medicaid, 21 So. 3d 600 (Miss. 2009).

§ 43-13-119. Division of Medicaid to design and implement temporary program to provide nonemergency transportation to locations for dialysis services for certain persons; transportation providers; relationship to Medicaid program [Repealed effective June 30, 2013].

(1) The Division of Medicaid shall immediately design and implement a temporary program to provide nonemergency transportation to locations for necessary dialysis services for end stage renal disease patients who are sixty-five (65) years of age or older or are disabled as determined under Section 1614(a)(3) of the federal Social Security Act, as amended, whose income did not exceed one hundred thirty-five percent (135%) of the nonfarm official poverty level as defined by the Office of Management and Budget, and whose resources did not exceed those established by the division as of December 31, 2005, whose eligibility was covered under the former category of eligibility known as PLADs (Poverty Level Aged and Disabled).

(2) The transportation services under the program shall be provided by any reasonable provider, which may include (a) public entities or (b) private entities and individuals who are in the business of providing nonemergency transportation, including faith-based organizations, and the division shall reimburse those entities and individuals or faith-based organizations for providing the transportation services in accordance with a mutually agreed upon reimbursement schedule.

(3) The program shall be funded from monies that are appropriated or otherwise made available to the division. The funds shall be appropriated to the division specifically to cover the cost of this program and shall not be a part of the division's regular appropriation for the operation of the federal-state Medicaid program.

(4) The program is a separate program that is not part of or connected to the Medicaid program, and the relationship of the division to the program is only as the administering agent.

(5) This section shall stand repealed on June 30, 2013.

SOURCES: Laws, 2006, ch. 303, § 1; Laws, 2007, ch. 412, § 1; Laws, 2008, ch. 422, § 1; Laws, 2010, ch. 498, § 3, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment substituted "June 30, 2013" for "June 30, 2010" in (5).

§ 43-13-121. Authority to administer article.

(1) The division shall administer the Medicaid program under the provisions of this article, and may do the following:

(a) Adopt and promulgate reasonable rules, regulations and standards, with approval of the Governor, and in accordance with the Administrative Procedures Law, Section 25-43-1 et seq.:

(i) Establishing methods and procedures as may be necessary for the proper and efficient administration of this article;

(ii) Providing Medicaid to all qualified recipients under the provisions of this article as the division may determine and within the limits of appropriated funds;

(iii) Establishing reasonable fees, charges and rates for medical services and drugs; in doing so, the division shall fix all of those fees, charges and rates at the minimum levels absolutely necessary to provide the medical assistance authorized by this article, and shall not change any of those fees, charges or rates except as may be authorized in Section 43-13-117;

(iv) Providing for fair and impartial hearings;

(v) Providing safeguards for preserving the confidentiality of records; and

(vi) For detecting and processing fraudulent practices and abuses of the program;

(b) Receive and expend state, federal and other funds in accordance with court judgments or settlements and agreements between the State of Mississippi and the federal government, the rules and regulations promulgated by the division, with the approval of the Governor, and within the limitations and restrictions of this article and within the limits of funds available for that purpose;

(c) Subject to the limits imposed by this article, to submit a Medicaid plan to the United States Department of Health and Human Services for approval under the provisions of the federal Social Security Act, to act for the state in making negotiations relative to the submission and approval of that plan, to make such arrangements, not inconsistent with the law, as may be required by or under federal law to obtain and retain that approval and to secure for the state the benefits of the provisions of that law.

No agreements, specifically including the general plan for the operation of the Medicaid program in this state, shall be made by and between the division and the United States Department of Health and Human Services unless the Attorney General of the State of Mississippi has reviewed the agreements, specifically including the operational plan, and has certified in writing to the Governor and to the executive director of the division that the agreements, including the plan of operation, have been drawn strictly in accordance with the terms and requirements of this article;

(d) In accordance with the purposes and intent of this article and in compliance with its provisions, provide for aged persons otherwise eligible for the benefits provided under Title XVIII of the federal Social Security Act by expenditure of funds available for those purposes;

(e) To make reports to the United States Department of Health and Human Services as from time to time may be required by that federal department and to the Mississippi Legislature as provided in this section;

(f) Define and determine the scope, duration and amount of Medicaid that may be provided in accordance with this article and establish priorities therefor in conformity with this article;

(g) Cooperate and contract with other state agencies for the purpose of coordinating Medicaid provided under this article and eliminating duplication and inefficiency in the Medicaid program;

(h) Adopt and use an official seal of the division;

(i) Sue in its own name on behalf of the State of Mississippi and employ legal counsel on a contingency basis with the approval of the Attorney General;

(j) To recover any and all payments incorrectly made by the division to a recipient or provider from the recipient or provider receiving the payments. The division shall be authorized to collect any overpayments to providers thirty (30) days after the conclusion of any administrative appeal unless the matter is appealed to a court of proper jurisdiction and bond is posted. To recover those payments, the division may use the following methods, in addition to any other methods available to the division:

(i) The division shall report to the Department of Revenue the name of any current or former Medicaid recipient who has received medical services rendered during a period of established Medicaid ineligibility and who has not reimbursed the division for the related medical service payment(s). The Department of Revenue shall withhold from the state tax refund of the individual, and pay to the division, the amount of the payment(s) for medical services rendered to the ineligible individual that have not been reimbursed to the division for the related medical service payment(s).

(ii) The division shall report to the Department of Revenue the name of any Medicaid provider to whom payments were incorrectly made that the division has not been able to recover by other methods available to the division. The Department of Revenue shall withhold from the state tax refund of the provider, and pay to the division, the amount of the payments that were incorrectly made to the provider that have not been recovered by other available methods;

(k) To recover any and all payments by the division fraudulently obtained by a recipient or provider. Additionally, if recovery of any payments fraudulently obtained by a recipient or provider is made in any court, then, upon motion of the Governor, the judge of the court may award twice the payments recovered as damages;

(*l*) Have full, complete and plenary power and authority to conduct such investigations as it may deem necessary and requisite of alleged or suspected violations or abuses of the provisions of this article or of the regulations adopted under this article, including, but not limited to, fraudulent or unlawful act or deed by applicants for Medicaid or other benefits, or payments made to any person, firm or corporation under the terms, conditions and authority of this article, to suspend or disqualify any provider of services, applicant or recipient for gross abuse, fraudulent or unlawful acts for such periods, including permanently, and under such conditions as the division deems proper and just, including the imposition of a legal rate of interest on the amount improperly or incorrectly paid. Recipients who are

found to have misused or abused Medicaid benefits may be locked into one (1) physician and/or one (1) pharmacy of the recipient's choice for a reasonable amount of time in order to educate and promote appropriate use of medical services, in accordance with federal regulations. If an administrative hearing becomes necessary, the division may, if the provider does not succeed in his or her defense, tax the costs of the administrative hearing, including the costs of the court reporter or stenographer and transcript, to the provider. The convictions of a recipient or a provider in a state or federal court for abuse, fraudulent or unlawful acts under this chapter shall constitute an automatic disqualification of the recipient or automatic disqualification of the provider from participation under the Medicaid program.

A conviction, for the purposes of this chapter, shall include a judgment entered on a plea of nolo contendere or a nonadjudicated guilty plea and shall have the same force as a judgment entered pursuant to a guilty plea or a conviction following trial. A certified copy of the judgment of the court of competent jurisdiction of the conviction shall constitute prima facie evidence of the conviction for disqualification purposes;

(m) Establish and provide such methods of administration as may be necessary for the proper and efficient operation of the Medicaid program, fully utilizing computer equipment as may be necessary to oversee and control all current expenditures for purposes of this article, and to closely monitor and supervise all recipient payments and vendors rendering services under this article. Notwithstanding any other provision of state law, the division is authorized to enter into a ten-year contract(s) with a vendor(s) to provide services described in this paragraph (m);

(n) To cooperate and contract with the federal government for the purpose of providing Medicaid to Vietnamese and Cambodian refugees, under the provisions of Public Law 94-23 and Public Law 94-24, including any amendments to those laws, only to the extent that the Medicaid assistance and the administrative cost related thereto are one hundred percent (100%) reimbursable by the federal government. For the purposes of Section 43-13-117, persons receiving Medicaid under Public Law 94-23 and Public Law 94-24, including any amendments to those laws, shall not be considered a new group or category of recipient; and

(o) The division shall impose penalties upon Medicaid only, Title XIX participating long-term care facilities found to be in noncompliance with division and certification standards in accordance with federal and state regulations, including interest at the same rate calculated by the United States Department of Health and Human Services and/or the Centers for Medicare and Medicaid Services (CMS) under federal regulations.

(2) The division also shall exercise such additional powers and perform such other duties as may be conferred upon the division by act of the Legislature.

(3) The division, and the State Department of Health as the agency for licensure of health care facilities and certification and inspection for the Medicaid and/or Medicare programs, shall contract for or otherwise provide for

the consolidation of on-site inspections of health care facilities that are necessitated by the respective programs and functions of the division and the department.

(4) The division and its hearing officers shall have power to preserve and enforce order during hearings; to issue subpoenas for, to administer oaths to and to compel the attendance and testimony of witnesses, or the production of books, papers, documents and other evidence, or the taking of depositions before any designated individual competent to administer oaths; to examine witnesses; and to do all things conformable to law that may be necessary to enable them effectively to discharge the duties of their office. In compelling the attendance and testimony of witnesses, or the production of books, papers, documents and other evidence, or the taking of depositions, as authorized by this section, the division or its hearing officers may designate an individual employed by the division or some other suitable person to execute and return that process, whose action in executing and returning that process shall be as lawful as if done by the sheriff or some other proper officer authorized to execute and return process in the county where the witness may reside. In carrying out the investigatory powers under the provisions of this article, the executive director or other designated person or persons may examine, obtain, copy or reproduce the books, papers, documents, medical charts, prescriptions and other records relating to medical care and services furnished by the provider to a recipient or designated recipients of Medicaid services under investigation. In the absence of the voluntary submission of the books, papers, documents, medical charts, prescriptions and other records, the Governor, the executive director, or other designated person may issue and serve subpoenas instantly upon the provider, his or her agent, servant or employee for the production of the books, papers, documents, medical charts, prescriptions or other records during an audit or investigation of the provider. If any provider or his or her agent, servant or employee refuses to produce the records after being duly subpoenaed, the executive director may certify those facts and institute contempt proceedings in the manner, time and place as authorized by law for administrative proceedings. As an additional remedy, the division may recover all amounts paid to the provider covering the period of the audit or investigation, inclusive of a legal rate of interest and a reasonable attorney's fee and costs of court if suit becomes necessary. Division staff shall have immediate access to the provider's physical location, facilities, records, documents, books, and any other records relating to medical care and services rendered to recipients during regular business hours.

(5) If any person in proceedings before the division disobeys or resists any lawful order or process, or misbehaves during a hearing or so near the place thereof as to obstruct the hearing, or neglects to produce, after having been ordered to do so, any pertinent book, paper or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath as a witness, or after having taken the oath refuses to be examined according to law, the executive director shall certify the facts to any court having jurisdiction in the place in which it is sitting, and the court shall thereupon, in a

summary manner, hear the evidence as to the acts complained of, and if the evidence so warrants, punish that person in the same manner and to the same extent as for a contempt committed before the court, or commit that person upon the same condition as if the doing of the forbidden act had occurred with reference to the process of, or in the presence of, the court.

(6) In suspending or terminating any provider from participation in the Medicaid program, the division shall preclude the provider from submitting claims for payment, either personally or through any clinic, group, corporation or other association to the division or its fiscal agents for any services or supplies provided under the Medicaid program except for those services or supplies provided before the suspension or termination. No clinic, group, corporation or other association that is a provider of services shall submit claims for payment to the division or its fiscal agents for any services or supplies provided by a person within that organization who has been suspended or terminated from participation in the Medicaid program except for those services or supplies provided before the suspension or termination. When this provision is violated by a provider of services that is a clinic, group, corporation or other association, the division may suspend or terminate that organization from participation. Suspension may be applied by the division to all known affiliates of a provider, provided that each decision to include an affiliate is made on a case-by-case basis after giving due regard to all relevant facts and circumstances. The violation, failure or inadequacy of performance may be imputed to a person with whom the provider is affiliated where that conduct was accomplished within the course of his or her official duty or was effectuated by him or her with the knowledge or approval of that person.

(7) The division may deny or revoke enrollment in the Medicaid program to a provider if any of the following are found to be applicable to the provider, his or her agent, a managing employee or any person having an ownership interest equal to five percent (5%) or greater in the provider:

(a) Failure to truthfully or fully disclose any and all information required, or the concealment of any and all information required, on a claim, a provider application or a provider agreement, or the making of a false or misleading statement to the division relative to the Medicaid program.

(b) Previous or current exclusion, suspension, termination from or the involuntary withdrawing from participation in the Medicaid program, any other state's Medicaid program, Medicare or any other public or private health or health insurance program. If the division ascertains that a provider has been convicted of a felony under federal or state law for an offense that the division determines is detrimental to the best interest of the program or of Medicaid beneficiaries, the division may refuse to enter into an agreement with that provider, or may terminate or refuse to renew an existing agreement.

(c) Conviction under federal or state law of a criminal offense relating to the delivery of any goods, services or supplies, including the performance of management or administrative services relating to the delivery of the goods, services or supplies, under the Medicaid program, any other state's Medicaid

program, Medicare or any other public or private health or health insurance program.

(d) Conviction under federal or state law of a criminal offense relating to the neglect or abuse of a patient in connection with the delivery of any goods, services or supplies.

(e) Conviction under federal or state law of a criminal offense relating to the unlawful manufacture, distribution, prescription or dispensing of a controlled substance.

(f) Conviction under federal or state law of a criminal offense relating to fraud, theft, embezzlement, breach of fiduciary responsibility or other financial misconduct.

(g) Conviction under federal or state law of a criminal offense punishable by imprisonment of a year or more that involves moral turpitude, or acts against the elderly, children or infirm.

(h) Conviction under federal or state law of a criminal offense in connection with the interference or obstruction of any investigation into any criminal offense listed in paragraphs (c) through (i) of this subsection.

(i) Sanction for a violation of federal or state laws or rules relative to the Medicaid program, any other state's Medicaid program, Medicare or any other public health care or health insurance program.

(j) Revocation of license or certification.

(k) Failure to pay recovery properly assessed or pursuant to an approved repayment schedule under the Medicaid program.

(*l*) Failure to meet any condition of enrollment.

SOURCES: Codes, 1942, § 7290-41; Laws, 1969, Ex Sess, ch. 37, § 11; Laws, 1976, ch. 317, § 2; Laws, 1978, ch. 421, § 1; Laws, 1983, ch. 336 § 1; Laws, 1984, ch. 488, § 50; Laws, 1986, ch. 437, § 5; Laws, 1994, ch. 649, § 4; Laws, 1995, ch. 614, § 3; Laws, 2000, ch. 301, § 9; Laws, 2001, ch. 594, § 3; Laws, 2002, ch. 636B, § 2; Laws, 2004, ch. 593, § 4; Laws, 2012, ch. 530, § 3, eff from and after passage (approved May 17, 2012.)

Editor's Note — Laws of 2012, ch. 530, § 5, provides:

"SECTION 5. (1) The Division of Medicaid shall develop proposals for the following:

"(a) The division shall develop a plan for the APR-DRG reimbursement methodology which increases such payments in order to reduce or eliminate Medicare Upper Payment Limits (UPL) program payments;

"(b) The division shall develop a plan to replace the existing hospital assessment provided in Section 43-13-145 with other possible revenue systems, including the possibility of a net inpatient revenue assessment;

"(c) The division shall develop a plan providing revisions to the current reimbursement methodology for prescription drugs.

"(d) The division shall develop a plan providing revisions to the current reimbursement methodology for nursing facility services.

"(2) The division shall not implement these plans, but shall submit the plans to the Public Health and Welfare Committee of the Senate and the Medicaid Committee of the House no later than October 15, 2012, including necessary legislative recommendations."

Amendment Notes — The 2012 amendment added the second sentence in (1)(j); substituted "Department of Revenue" for "State Tax Commission" twice in (1)(j)(i) and (ii); and added last sentence in (1)(m).

§ 43-13-145. Assessment levied upon health care facilities; keeping of records; collection of assessments; effect of delinquency in payment [Subsections (4) and (10) through (16) repealed effective July 1, 2013].

(1)(a) Upon each nursing facility licensed by the State of Mississippi, there is levied an assessment in an amount set by the division, equal to the maximum rate allowed by federal law or regulation, for each licensed and occupied bed of the facility.

(b) A nursing facility is exempt from the assessment levied under this subsection if the facility is operated under the direction and control of:

(i) The United States Veterans Administration or other agency or department of the United States government;

(ii) The State Veterans Affairs Board; or

(iii) The University of Mississippi Medical Center.

(2)(a) Upon each intermediate care facility for the mentally retarded licensed by the State of Mississippi, there is levied an assessment in an amount set by the division, equal to the maximum rate allowed by federal law or regulation, for each licensed and occupied bed of the facility.

(b) An intermediate care facility for the mentally retarded is exempt from the assessment levied under this subsection if the facility is operated under the direction and control of:

(i) The United States Veterans Administration or other agency or department of the United States government;

(ii) The State Veterans Affairs Board; or

(iii) The University of Mississippi Medical Center.

(3)(a) Upon each psychiatric residential treatment facility licensed by the State of Mississippi, there is levied an assessment in an amount set by the division, equal to the maximum rate allowed by federal law or regulation, for each licensed and occupied bed of the facility.

(b) A psychiatric residential treatment facility is exempt from the assessment levied under this subsection if the facility is operated under the direction and control of:

(i) The United States Veterans Administration or other agency or department of the United States government;

(ii) The University of Mississippi Medical Center; or

(iii) A state agency or a state facility that either provides its own state match through intergovernmental transfer or certification of funds to the division.

(4) Hospital assessment.

(a)(i) Subject to and upon fulfillment of the requirements and conditions of paragraph (f) below, and notwithstanding any other provisions of this section, effective for state fiscal year 2013, an annual assessment on each hospital licensed in the state is imposed on each non-Medicare hospital inpatient day as defined below at a rate that is determined by dividing the sum prescribed in this subparagraph (i), plus the nonfederal share

necessary to maximize the Disproportionate Share Hospital (DSH) and inpatient Medicare Upper Payment Limits (UPL) payments, by the total number of non-Medicare hospital inpatient days as defined below for all licensed Mississippi hospitals, except as provided in paragraph (d) below. If the state matching funds percentage for the Mississippi Medicaid program is sixteen percent (16%) or less, the sum used in the formula under this subparagraph (i) shall be Seventy-four Million Dollars ($74,000,000.00). If the state matching funds percentage for the Mississippi Medicaid program is twenty-four percent (24%) or higher, the sum used in the formula under this subparagraph (i) shall be One Hundred Four Million Dollars ($104,000,000.00). If the state matching funds percentage for the Mississippi Medicaid program is between sixteen percent (16%) and twenty-four percent (24%), the sum used in the formula under this subparagraph (i) shall be a pro rata amount determined as follows: the current state matching funds percentage rate minus sixteen percent (16%) divided by eight percent (8%) multiplied by Thirty Million Dollars ($30,000,000.00) and add that amount to Seventy-four Million Dollars ($74,000,000.00). However, no assessment in a quarter under this subparagraph (i) may exceed the assessment in the previous quarter by more than Three Million Seven Hundred Fifty Thousand Dollars ($3,750,000.00) (which would be Fifteen Million Dollars ($15,000,000.00) on an annualized basis). The division shall publish the state matching funds percentage rate applicable to the Mississippi Medicaid program on the tenth day of the first month of each quarter and the assessment determined under the formula prescribed above shall be applicable in the quarter following any adjustment in that state matching funds percentage rate. The division shall notify each hospital licensed in the state as to any projected increases or decreases in the assessment determined under this subparagraph (i). However, if the Centers for Medicare and Medicaid Services (CMS) does not approve the provision in Section 43-13-117(39) requiring the division to reimburse crossover claims for inpatient hospital services and crossover claims covered under Medicare Part B for dually eligible beneficiaries in the same manner that was in effect on January 1, 2008, the sum that otherwise would have been used in the formula under this subparagraph (i) shall be reduced by Seven Million Dollars ($7,000,000.00).

(ii) In addition to the assessment provided under subparagraph (i), effective for state fiscal year 2013, an additional annual assessment on each hospital licensed in the state is imposed on each non-Medicare hospital inpatient day as defined below at a rate that is determined by dividing twenty-five percent (25%) of any provider reductions in the Medicaid program as authorized in Section 43-13-117(F) for that fiscal year up to the following maximum amount, plus the nonfederal share necessary to maximize the Disproportionate Share Hospital (DSH) and inpatient Medicare Upper Payment Limits (UPL) payments, by the total number of non-Medicare hospital inpatient days as defined below for all

licensed Mississippi hospitals: in fiscal year 2010, the maximum amount shall be Twenty-four Million Dollars ($24,000,000.00); in fiscal year 2011, the maximum amount shall be Thirty-two Million Dollars ($32,000,000.00); and in fiscal year 2012 and thereafter, the maximum amount shall be Forty Million Dollars ($40,000,000.00). Any such deficit in the Medicaid program shall be reviewed by the PEER Committee as provided in Section 43-13-117(F).

(iii) In addition to the assessments provided in subparagraphs (i) and (ii), effective for state fiscal year 2013, an additional annual assessment on each hospital licensed in the state is imposed pursuant to the provisions of Section 43-13-117(F) if the cost containment measures described therein have been implemented and there are insufficient funds in the Health Care Trust Fund to reconcile any remaining deficit in any fiscal year. If the Governor institutes any other additional cost containment measures on any program or programs authorized under the Medicaid program pursuant to Section 43-13-117(F), hospitals shall be responsible for twenty-five percent (25%) of any such additional imposed provider cuts, which shall be in the form of an additional assessment not to exceed the twenty-five percent (25%) of provider expenditure reductions. Such additional assessment shall be imposed on each non-Medicare hospital inpatient day in the same manner as assessments are imposed under subparagraphs (i) and (ii).

(b) Payment and definitions.

(i) Payment. Upon approval of the State Plan Amendment for the division's DSH and inpatient UPL payment methodology by CMS, the assessment shall be paid in three (3) installments due no later than ten (10) days before the payment of the DSH and UPL payments required by Section 43-13-117(A)(18), which shall be paid during the second, third and fourth quarters of the state fiscal year.

(ii) Definitions. For purposes of this subsection (4):

1. "Non-Medicare hospital inpatient day" means total hospital inpatient days including subcomponent days less Medicare inpatient days including subcomponent days from the hospital's 2010 Medicare cost report on file with CMS.

a. Total hospital inpatient days shall be the sum of Worksheet S-3, Part 1, column 6 row 12, column 6 row 14.00, and column 6 row 14.01, excluding column 6 rows 3 and 4.

b. Hospital Medicare inpatient days shall be the sum of Worksheet S-3, Part 1, column 4 row 12, column 4 row 14.00, and column 4 row 14.01, excluding column 4 rows 3 and 4.

c. Inpatient days shall not include residential treatment or long-term care days.

2. "Subcomponent inpatient day" means the number of days of care charged to a beneficiary for inpatient hospital rehabilitation and psychiatric care services in units of full days. A day begins at midnight and ends twenty-four (24) hours later. A part of a day, including the day of

admission and day on which a patient returns from leave of absence, counts as a full day. However, the day of discharge, death, or a day on which a patient begins a leave of absence is not counted as a day unless discharge or death occur on the day of admission. If admission and discharge or death occur on the same day, the day is considered a day of admission and counts as one (1) subcomponent inpatient day.

(c) The assessment provided in this subsection is intended to satisfy and not be in addition to the assessment and intergovernmental transfers provided in Section 43-13-117(A)(18). Nothing in this section shall be construed to authorize any state agency, division or department, or county, municipality or other local governmental unit to license for revenue, levy or impose any other tax, fee or assessment upon hospitals in this state not authorized by a specific statute.

(d) Hospitals operated by the United States Department of Veterans Affairs and state-operated facilities that provide only inpatient and outpatient psychiatric services shall not be subject to the hospital assessment provided in this subsection.

(e) Multihospital systems, closure, merger and new hospitals.

(i) If a hospital conducts, operates or maintains more than one (1) hospital licensed by the State Department of Health, the provider shall pay the hospital assessment for each hospital separately.

(ii) Notwithstanding any other provision in this section, if a hospital subject to this assessment operates or conducts business only for a portion of a fiscal year, the assessment for the state fiscal year shall be adjusted by multiplying the assessment by a fraction, the numerator of which is the number of days in the year during which the hospital operates, and the denominator of which is three hundred sixty-five (365). Immediately upon ceasing to operate, the hospital shall pay the assessment for the year as so adjusted (to the extent not previously paid).

(f) Applicability.

The hospital assessment imposed by this subsection shall not take effect and/or shall cease to be imposed if:

(i) The assessment is determined to be an impermissible tax under Title XIX of the Social Security Act; or,

(ii) CMS revokes its approval of the division's 2009 Medicaid State Plan Amendment for the methodology for DSH and inpatient UPL payments to hospitals under Section 43-13-117(A)(18).

This subsection (4) is repealed on July 1, 2013.

(5) Each health care facility that is subject to the provisions of this section shall keep and preserve such suitable books and records as may be necessary to determine the amount of assessment for which it is liable under this section. The books and records shall be kept and preserved for a period of not less than five (5) years, during which time those books and records shall be open for examination during business hours by the division, the Department of Revenue, the Office of the Attorney General and the State Department of Health.

(6) Except as provided in subsection (4) of this section, the assessment levied under this section shall be collected by the division each month beginning on March 31, 2005.

(7) All assessments collected under this section shall be deposited in the Medical Care Fund created by Section 43-13-143.

(8) The assessment levied under this section shall be in addition to any other assessments, taxes or fees levied by law, and the assessment shall constitute a debt due the State of Mississippi from the time the assessment is due until it is paid.

(9)(a) If a health care facility that is liable for payment of an assessment levied by the division does not pay the assessment when it is due, the division shall give written notice to the health care facility by certified or registered mail demanding payment of the assessment within ten (10) days from the date of delivery of the notice. If the health care facility fails or refuses to pay the assessment after receiving the notice and demand from the division, the division shall withhold from any Medicaid reimbursement payments that are due to the health care facility the amount of the unpaid assessment and a penalty of ten percent (10%) of the amount of the assessment, plus the legal rate of interest until the assessment is paid in full. If the health care facility does not participate in the Medicaid program, the division shall turn over to the Office of the Attorney General the collection of the unpaid assessment by civil action. In any such civil action, the Office of the Attorney General shall collect the amount of the unpaid assessment and a penalty of ten percent (10%) of the amount of the assessment, plus the legal rate of interest until the assessment is paid in full.

(b) As an additional or alternative method for collecting unpaid assessments levied by the division, if a health care facility fails or refuses to pay the assessment after receiving notice and demand from the division, the division may file a notice of a tax lien with the chancery clerk of the county in which the health care facility is located, for the amount of the unpaid assessment and a penalty of ten percent (10%) of the amount of the assessment, plus the legal rate of interest until the assessment is paid in full. Immediately upon receipt of notice of the tax lien for the assessment, the chancery clerk shall forward the notice to the circuit clerk who shall enter the notice of the tax lien as a judgment upon the judgment roll and show in the appropriate columns the name of the health care facility as judgment debtor, the name of the division as judgment creditor, the amount of the unpaid assessment, and the date and time of enrollment. The judgment shall be valid as against mortgagees, pledgees, entrusters, purchasers, judgment creditors and other persons from the time of filing with the clerk. The amount of the judgment shall be a debt due the State of Mississippi and remain a lien upon the tangible property of the health care facility until the judgment is satisfied. The judgment shall be the equivalent of any enrolled judgment of a court of record and shall serve as authority for the issuance of writs of execution, writs of attachment or other remedial writs.

(10) As soon as possible after July 1, 2009, the Division of Medicaid shall submit to the Centers for Medicare and Medicaid Services (CMS) a state plan amendment or amendments (SPA) regarding the hospital assessment established under subsection (4) of this section. In addition to defining the assessment established in subsection (4) of this section, the state plan amendment or amendments shall include any amendments necessary to provide for the following additional annual Medicare Upper Payment Limits (UPL) and Disproportionate Share Hospital (DSH) payments to hospitals located in Mississippi that participate in the Medicaid program:

(a) Privately operated and nonstate government operated general acute care hospitals, within the meaning of 42 CFR Section 447.272, that have fifty (50) or fewer licensed beds as of January 1, 2009, shall receive an additional inpatient UPL payment equal to sixty-five percent (65%) of their fiscal year 2012 hospital specific inpatient UPL gap, before any payments under this subsection.

(b) General acute care hospitals licensed within the class of state hospitals shall receive an additional inpatient UPL payment equal to twenty-eight percent (28%) of their fiscal year 2007 inpatient payments, excluding DSH and UPL payments.

(c) General acute care hospitals licensed within the class of nonstate government hospitals shall receive an additional inpatient UPL payment determined by multiplying inpatient payments, excluding DSH and UPL, by the uniform percentage necessary to exhaust the maximum amount of inpatient UPL payments permissible under federal regulations. (For state fiscal year 2013, the state shall use 2010 inpatient payment data).

(d) Free-standing psychiatric hospitals shall receive an additional inpatient UPL payment equal to Eight Hundred Fifty Dollars ($850.00), less the hospital's fiscal year 2010 average Medicaid inpatient per diem rate, multiplied by the hospital's fiscal year 2010 Medicaid inpatient days. Residential treatment days and payments shall be excluded from this calculation. Nothing in this paragraph shall prevent the division from reimbursing private free-standing psychiatric hospitals based upon a DRG or APR-DRG based reimbursement methodology.

(e) If for any reason the 2009 Medicaid state plan amendment or amendments are not approved by CMS, not implemented, discontinued, or otherwise not in effect, the following reimbursement methodology for inpatient psychiatric services shall immediately become effective:

(i) If the services are provided by a nonpublic licensed acute care psychiatric facility, the services shall be reimbursed by the division using the prospective payment system used by CMS to reimburse inpatient psychiatric services, as set forth in Part 412, Subpart N of Title 42 of the Code of Federal Regulations.

(ii) If the services are provided by a nonpublic hospital (as defined in Section 41-9-3(a)) that has fifty (50) or more licensed psychiatric beds, the division shall allow the hospital to elect whether to be reimbursed for these services using the prospective payment system used by CMS to

reimburse psychiatric services, as set forth in Part 412, Subpart N of Title 42 of the Code of Federal Regulations. If a hospital included in this subparagraph (ii) does not provide an affirmative election to the division, the division shall continue to reimburse the hospital under the principles outlined in Section 43-13-117.

(iii) If the services are provided by a provider other than those specified in subparagraphs (i) and (ii) of this paragraph, the division shall continue to reimburse the provider under the principles outlined in Section 43-13-117.

(f) In addition to other payments provided above, all hospitals licensed within the class of private hospitals, other than free-standing psychiatric hospitals, shall receive an additional inpatient UPL payment determined by multiplying inpatient payments, excluding DSH and UPL, by the uniform percentage necessary to exhaust the maximum amount of UPL inpatient payments permissible under federal regulations. For state fiscal year 2013, the state shall use 2010 data.

(g) All hospitals satisfying the minimum federal DSH eligibility requirements (Section 1923(d) of the Social Security Act) shall, subject to OBRA 1993 payment limitations, receive an additional DSH payment. This additional DSH payment shall expend the balance of the federal DSH allotment and associated state share not utilized in DSH payments to state-owned institutions for treatment of mental diseases. The payment to each hospital shall be calculated by applying a uniform percentage to the uninsured costs of each eligible hospital, excluding state-owned institutions for treatment of mental diseases; however, that percentage for a state-owned teaching hospital located in Hinds County shall be multiplied by a factor of two (2).

(11) The hospital assessment provided in subsection (4) of this section shall not be in effect or implemented until the SPA is approved by CMS.

(12) The division shall implement DSH and UPL calculation methodologies that result in the maximization of available federal funds.

(13) The DSH and inpatient UPL payments shall be paid on or before December 31, March 31, and June 30 of each fiscal year, in increments of one-third (1/3) of the total calculated DSH and inpatient UPL amounts.

(14) The hospital assessment as described in subsection (4) above shall be assessed and collected quarterly a maximum of ten (10) days before making the DSH and inpatient UPL payments; provided, however, that the first quarterly payment shall be assessed but not be collected until collection is made for the second quarterly payment.

(15) If for any reason any part of the plan for additional annual DSH and inpatient UPL payments to hospitals provided under subsection (10) of this section is not approved by CMS, the remainder of the plan shall remain in full force and effect.

(16) Nothing in this section shall prevent the Division of Medicaid from facilitating participation in Medicaid supplemental hospital payment programs by a hospital located in a county contiguous to the State of Mississippi

that is also authorized by federal law to submit intergovernmental transfers (IGTs) to the State of Mississippi to fund the state share of the hospital's supplemental payments.

(17) Subsections (10) through (16) of this section shall stand repealed on July 1, 2013.

SOURCES: Laws, 1992, ch. 487, § 7; Laws, 2002, ch. 636B, § 5; Laws, 2003, ch. 543, § 6; Laws, 2004, ch. 593, § 6; Laws, 2005, ch. 470, § 3; brought forward without change, Laws, 2008, ch. 360, § 3; Laws, 2009, 2nd Ex Sess, ch. 118, § 3; Laws, 2012, ch. 530, § 4, eff from and after passage (approved May 17, 2012.)

Editor's Note — Chapter 118 of the Second Extraordinary Session of 2009 was effective on July 1, 2009, but the amendments to this section were contingent upon the effectuation of the hospital assessment provided for in subsection (4) of this section. Subsection (4)(f) of this section [in the first version of the section as it appeared in Laws of 2009, 2nd Ex Session, Ch. 118, § 3] provides that the hospital assessment will not take effect if the Centers for Medicare and Medicaid Services (CMS) does not approve the Division of Medicaid's 2009 Medicaid State Plan Amendment for its methodology for Disproportionate Share Hospital (DSH) and inpatient Medicare Upper Payment Limits (UPL) payments to hospitals. CMS approved the State Plan Amendment on March 9, 2010, and the hospital assessment then became effective, so the amendments to this section by Chapter 118 of the Second Extraordinary Session of 2009 became effective on March 9, 2010.

Laws of 2012, ch. 530, § 5, provides:

"SECTION 5. (1) The Division of Medicaid shall develop proposals for the following:

"(a) The division shall develop a plan for the APR-DRG reimbursement methodology which increases such payments in order to reduce or eliminate Medicare Upper Payment Limits (UPL) program payments;

"(b) The division shall develop a plan to replace the existing hospital assessment provided in Section 43-13-145 with other possible revenue systems, including the possibility of a net inpatient revenue assessment;

"(c) The division shall develop a plan providing revisions to the current reimbursement methodology for prescription drugs.

"(d) The division shall develop a plan providing revisions to the current reimbursement methodology for nursing facility services.

"(2) The division shall not implement these plans, but shall submit the plans to the Public Health and Welfare Committee of the Senate and the Medicaid Committee of the House no later than October 15, 2012, including necessary legislative recommendations."

Amendment Notes — The 2012 amendment substituted "year 2013" for "years 2010, 2011 and 2012" in the first sentence of (4)(a)(i) through (iii); rewrote (4)(b)(ii)(1) and (4)(f)(ii); substituted "this section" for "Chapter 118, Laws of 2009, second Extraordinary Session" in (4)(c); substituted "2013" for "2012" at the end of the last paragraph of (4) and (17); substituted "Department of Revenue" for "State Tax Commission" in the last sentence of (5); rewrote (10); deleted former (15), which read "Hospitals shall receive the Medicare published market basket inflationary index payment increase annually"; and added (16).

ARTICLE 7.

THIRD PARTY LIABILITY FOR MEDICAL PAYMENTS.

SEC.
43-13-311. Requirement of cooperation by providers.

§ 43-13-311. Requirement of cooperation by providers.

Providers of medical services participating in the Medicaid program shall, in submitting claims for the payment of services, identify, if known to the provider, the third party or parties who are or may be liable for the injuries, disease, or sickness of the recipient and shall cooperate with the Division of Medicaid in the recoupment of the payments from such third party or parties.

Any provider submitting claims for the payment of medical services by the Division of Medicaid, who, having knowledge of the liability or potential liability of a third party for the injuries, disease, or sickness of the recipient, fails to identify such third party or parties to the Division of Medicaid or who fails to cooperate with the Division of Medicaid in the recoupment of its payments from such third party or parties shall be liable to the Division of Medicaid to the extent of the payments made to the provider for medical assistance or services rendered to a recipient to which the third party or parties is, are, or may be liable.

SOURCES: Laws, 1985, ch. 497, § 6, eff from and after July 1, 1985.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical error in the first paragraph by substituting "in submitting claims for the payment of services" for "in committing claims for the payment of services." The Joint Committee ratified the correction at its July 22, 2010, meeting.

§ 43-13-317. Recovery of Medicaid payments from estate of deceased recipient; waiver of claim.

JUDICIAL DECISIONS

1. Homestead Exemption.

Executrix did not waive the homestead exemption by entering into a contractual relationship with the Mississippi Division of Medicaid on behalf of a decedent because the record did not support the idea that the decedent had any knowledge of the benefits a homestead exemption provided, nor that he intentionally waived his right to the benefit of that exemption since the contract did not provide any information pertaining to, or even mention, the significance of any exemption; there was no evidence of the decedent's intent to waive any of his rights because by entering into the contract, the decedent merely acknowledged Medicaid as a creditor of his estate, which estate had no property against which Medicaid could recover. State v. Stinson (In re Estate of Darby), 68 So. 3d 702 (Miss. Ct. App. 2011), writ of certiorari denied by 69 So. 3d 767, 2011 Miss. LEXIS 419 (Miss. 2011).

Trial court did not err in granting an executrix summary judgment and in determining that the claim of the Mississippi Division of Medicaid was not valid against a decedent's property because the

decedent predeceased his children and a grandchild to whom he devised all of his property, and pursuant to the unambiguous language of Miss. Code Ann. §§ 85-3-21, 91-1-19, and 91-1-21, coupled with case law, the homestead, with its exemption, passed from the decedent to his children and grandchildren free of his debts; thus, Medicaid was not entitled to pursue a claim against the exempted property as it was not a part of the estate. State v. Stinson (In re Estate of Darby), 68 So. 3d 702 (Miss. Ct. App. 2011), writ of certiorari denied by 69 So. 3d 767, 2011 Miss. LEXIS 419 (Miss. 2011).

ARTICLE 9.

HEALTH CARE TRUST FUND FOR TOBACCO SETTLEMENT FUNDS.

SEC.

§ 43-13-405. Establishment of Health Care Trust Fund; fund to remain inviolate; authority to transfer certain assets of the fund if there is a reciprocal transfer into the fund [Repealed effective July 1, 2013].

(1) In accordance with the purposes of this article, there is established in the State Treasury the Health Care Trust Fund, into which shall be deposited Two Hundred Eighty Million Dollars ($280,000,000.00) of the funds received by the State of Mississippi as a result of the tobacco settlement as of the end of fiscal year 1999, and all tobacco settlement installment payments made in subsequent years for which the use or purpose for expenditure is not restricted by the terms of the settlement, except as otherwise provided in Section 43-13-407(2) and (3) and Section 41-113-11. All income from the investment of the funds in the Health Care Trust Fund shall be credited to the account of the Health Care Trust Fund. The funds in the Health Care Trust Fund at the end of a fiscal year shall not lapse into the State General Fund.

(2) The Health Care Trust Fund shall remain inviolate and shall never be expended, except as provided in this article. The Legislature shall appropriate from the Health Care Trust Fund such sums as are necessary to recoup any funds lost as a result of any of the following actions:

(a) The federal Centers for Medicare and Medicaid Services, or other agency of the federal government, is successful in recouping tobacco settlement funds from the State of Mississippi;

(b) The federal share of funds for the support of the Mississippi Medicaid Program is reduced directly or indirectly as a result of the tobacco settlement;

(c) Federal funding for any other program is reduced as a result of the tobacco settlement; or

(d) Tobacco cessation programs are mandated by the federal government or court order.

(3) The State Treasurer may transfer ownership of all assets in the RMK Select Timberland 1 Portfolio of the Health Care Trust Fund to the Public Employees' Retirement System to be credited to the Public Employees' Retirement System employer's accumulation account. However, in no instance shall the State Treasurer make this transfer until a transfer equal to the monetary value of the assets in the RMK Select Timberland 1 Portfolio of the Health Care Trust Fund is made by the Public Employees' Retirement System into the Health Care Trust Fund.

(4) This section shall stand repealed on July 1, 2013.

SOURCES: Laws, 1999, ch. 493, § 3; Laws, 2002, ch. 304, § 3; Laws, 2004, ch. 571, § 1; Laws, 2006, ch. 584, § 1; Laws, 2007, ch. 514, § 19; Laws, 2009, ch. 563, § 5; Laws, 2011, ch. 469, § 5; Laws, 2011, ch. 506, § 4, eff from and after passage (approved Apr. 26, 2011.)

Joint Legislative Committee Note — Section 5 of ch. 469, Laws of 2011, effective from and after passage (approved March 30, 2011), amended this section. Section 4 of ch. 506, Laws of 2011, effective from and after passage (approved April 26, 2011), also amended this section. As set out above, this section reflects the language of Section 4 of ch. 506, Laws of 2011, which contains language that specifically provides that it supersedes § 43-13-405 as amended by Laws of 2011, ch. 469.

Editor's Note — Laws of 2011, ch. 469, § 7, provides:

"SECTION 7. Sections 5 and 6 of this act shall take effect and be in force from and after its passage [approved March 30, 2011], and the remainder of this act shall take effect and be in force from and after July 1, 2011."

Amendment Notes — The first 2011 amendment (ch. 469) added (3).

The second 2011 amendment (ch. 506) added the last sentence in (3), and substituted "July 1, 2013" for "July 1, 2011" at the end of (4).

§ 43-13-407. Establishment of Health Care Expendable Fund; annual transfers from Health Care Trust Fund; expenditures to be exclusively for health care purposes; authorization to borrow funds to offset temporary cash flow deficiencies in Expendable Fund [Subsections (1), (2), (5), (6) and (7) repealed effective July 1, 2013].

(1) In accordance with the purposes of this article, there is established in the State Treasury the Health Care Expendable Fund, into which shall be transferred from the Health Care Trust Fund the following sums:

(a) In fiscal year 2005, Four Hundred Fifty-six Million Dollars ($456,000,000.00);

(b) In fiscal year 2006, One Hundred Eighty-six Million Dollars ($186,000,000.00);

(c) In fiscal year 2007, One Hundred Eighty-six Million Dollars ($186,000,000.00);

(d) In fiscal year 2008, One Hundred Six Million Dollars ($106,000,000.00);

(e) In fiscal year 2009, Ninety-two Million Two Hundred Fifty Thousand Dollars ($92,250,000.00);

(f) In the fiscal year beginning after the calendar year in which none of the amount of the annual tobacco settlement installment payment will be deposited into the Health Care Expendable Fund as provided in subsection (3) (d) of this section, and in each fiscal year thereafter, a sum equal to the average annual amount of the dividends, interest and other income, including increases in value of the principal, earned on the funds in the Health Care Trust Fund during the preceding four (4) fiscal years.

(2) In any fiscal year in which interest, dividends and other income from the investment of the funds in the Health Care Trust Fund are not sufficient to fund the full amount of the annual transfer into the Health Care Expendable Fund as required in subsection (1) (f) of this section, the State Treasurer shall transfer from tobacco settlement installment payments an amount that is sufficient to fully fund the amount of the annual transfer.

(3) Beginning with calendar year 2009, at the time that the State of Mississippi receives the tobacco settlement installment payment for each calendar year, the State Treasurer shall deposit the following amounts of each of those installment payments into the Health Care Expendable Fund:

(a) In calendar years 2009 and 2010, the total amount of the installment payment;

(b) In calendar year 2011, the amount of the installment payment less Ten Million Dollars ($10,000,000.00);

(c) In calendar year 2012, the total amount of the installment payment;

(d) In calendar year 2013, and each calendar year thereafter, the amount of the installment payment to be deposited into the Health Care Expendable Fund shall be reduced by an additional Ten Million Dollars ($10,000,000.00) each calendar year until the calendar year that the amount of the installment payment that otherwise would be deposited into the Health Care Expendable Fund is less than the average annual amount of the dividends, interest and other income, including increases in value of the principal, earned on the funds in the Health Care Trust Fund during the preceding four (4) fiscal years. Beginning with that calendar year and each calendar year thereafter, none of the amount of the installment payment shall be deposited into the Health Care Expendable Fund.

(4)(a) In addition to any other sums required to be transferred from the Health Care Trust Fund to the Health Care Expendable Fund, the sum of One Hundred Twelve Million Dollars ($112,000,000.00) shall be transferred from the Health Care Trust Fund to the Health Care Expendable Fund in fiscal year 2011.

(b) In addition to any other sums required to be transferred from the Health Care Trust Fund to the Health Care Expendable Fund, the sum of Fifty-six Million Two Hundred Sixty-three Thousand Four Hundred Thirty-eight Dollars ($56,263,438.00) shall be transferred from the Health Care Trust Fund to the Health Care Expendable Fund during fiscal year 2012.

(c) In addition to any other sums required to be transferred from the Health Care Trust Fund to the Health Care Expendable Fund, the sum of Ninety-seven Million Four Hundred Fifty Thousand Three Hundred Thirty-two Dollars ($97,450,332.00) shall be transferred from the Health Care Trust fund to the Health Care Expendable Fund during fiscal year 2013.

(5) If Medicaid expenditures are projected to exceed the amount of funds appropriated to the Division of Medicaid in any fiscal year in excess of the expenditure reductions to providers, funds shall be transferred by the State Fiscal Officer from the Health Care Trust Fund into the Health Care Expendable Fund and then to the Governor's Office, Division of Medicaid, in the amount and at such time as requested by the Governor to reconcile the deficit.

(6) All income from the investment of the funds in the Health Care Expendable Fund shall be credited to the account of the Health Care Expendable Fund. Any funds in the Health Care Expendable Fund at the end of a fiscal year shall not lapse into the State General Fund.

(7) The funds in the Health Care Expendable Fund shall be available for expenditure under specific appropriation by the Legislature beginning in fiscal year 2000, and shall be expended exclusively for health care purposes.

(8) The provisions of subsection (1) of this section may not be changed in any manner except upon amendment to that subsection by a bill enacted by the Legislature with a vote of not less than three-fifths (3/5) of the members of each house present and voting.

(9) If the State Treasurer, in consultation with the Executive Director of the Department of Finance and Administration, determines that there is a need to borrow funds to offset any temporary cash flow deficiencies in the Health Care Expendable Fund created in this section, the Treasurer may borrow those funds from any state-source special funds in the State Treasury in amounts that can be repaid from the Health Care Expendable Fund during the fiscal year in which the funds are borrowed. The State Treasurer shall immediately notify the Legislative Budget Office and the Department of Finance and Administration of each transfer into and out of the Health Care Expendable Fund.

(10) No later than September 30, 2011, the State Treasurer shall transfer from the Health Care Expendable Fund to the Health Care Trust Fund an amount equivalent to the unencumbered ending cash balance of the Health Care Expendable Fund as of June 30, 2011, less Three Million Eight Hundred Forty Thousand Dollars ($3,840,000.00).

(11) Subsections (1), (2), (5), (6) and (7) of this section shall stand repealed on July 1, 2013.

SOURCES: Laws, 1999, ch. 493, § 4; Laws, 2002, ch. 304, § 2; Laws, 2003, ch. 424, § 1; Laws, 2004, ch. 571, § 2; Laws, 2004, ch. 595, § 12; Laws, 2005, 1st Ex Sess, ch. 1, § 1; Laws, 2006, ch. 531, § 1; Laws, 2007, ch. 560, § 1; Laws, 2008, ch. 507, § 4; Laws, 2009, 2nd Ex Sess, ch. 118, § 4; Laws, 2009, ch. 563, § 6; Laws, 2010, ch. 562, § 6; Laws, 2011, ch. 506, § 5; Laws, 2012, ch. 547, § 2, eff from and after July 1, 2012.

Amendment Notes — The 2010 amendment rewrote (4).

The 2011 amendment added (4)(b), (9), and (10); and substituted "July 1, 2013" for "July 1, 2011" at the end of (11).

The 2012 amendment added (4)(c).

CHAPTER 14

Mississippi Statewide System of Care for Children and Youth

SEC.

§ 43-14-1. Mississippi Statewide System of Care for children and youth; purpose; included services; Interagency Coordinating Council for Children and Youth (ICCCY) established; membership; Interagency System of Care Council (ISCC); purpose and composition; Multidisciplinary Assessment, Planning and Resource (MAP) teams; funds contributed by participating state agencies.

(1) The purpose of this chapter is to provide for the development, implementation and oversight of a coordinated interagency system of necessary services and care for children and youth, called the Mississippi Statewide System of Care, up to age twenty-one (21) with serious emotional/behavioral disorders including, but not limited to, conduct disorders, or mental illness who require services from a multiple services and multiple programs system, and who can be successfully diverted from inappropriate institutional placement. The Mississippi Statewide System of Care is to be conducted in the most fiscally responsible (cost-efficient) manner possible, based on an individualized plan of care which takes into account other available interagency programs, including, but not limited to, Early Intervention Act of Infants and Toddlers, Section 41-87-1 et seq., Early Periodic Screening Diagnosis and Treatment, Section 43-13-117(5), waivered program for home- and community-based services for developmentally disabled people, Section 43-13-117(29), and waivered program for targeted case management services for children with special needs, Section 43-13-117(31), those children identified through the federal Individuals with Disabilities Education Act of 1997 as having a serious emotional disorder (EMD), the Mississippi Children's Health Insurance Program and waivered programs for children with serious emotional disturbances, Section 43-13-117(46), and is tied to clinically and functionally appropriate outcomes. Some of the outcomes are to reduce the number of inappropriate out-of-home placements inclusive of those out-of-state and to

reduce the number of inappropriate school suspensions and expulsions for this population of children. This coordinated interagency system of necessary services and care shall be named the Mississippi Statewide System of Care. Children to be served by this chapter who are eligible for Medicaid shall be screened through the Medicaid Early Periodic Screening Diagnosis and Treatment (EPSDT) and their needs for medically necessary services shall be certified through the EPSDT process. For purposes of this chapter, the Mississippi Statewide System of Care is defined as a coordinated network of agencies and providers working as a team to make a full range of mental health and other necessary services available as needed by children with mental health problems and their families. The Mississippi Statewide System of Care shall be:

(a) Child centered, family focused, family driven and youth guided;

(b) Community based;

(c) Culturally competent and responsive; and shall provide for:

(i) Service coordination or case management;

(ii) Prevention and early identification and intervention;

(iii) Smooth transitions among agencies and providers, and to the transition-age and adult service systems;

(iv) Human rights protection and advocacy;

(v) Nondiscrimination in access to services;

(vi) A comprehensive array of services composed of treatment and informal supports that are identified as best practices and/or evidence-based practices;

(vii) Individualized service planning that uses a strengths-based, wraparound process;

(viii) Services in the least restrictive environment;

(ix) Family participation in all aspects of planning, service delivery and evaluation; and

(x) Integrated services with coordinated planning across child-serving agencies.

Mississippi Statewide System of Care services shall be timely, intensive, coordinated and delivered in the community. Mississippi Statewide System of Care services shall include, but not be limited to, the following:

(a) Comprehensive crisis and emergency response services;

(b) Intensive case management;

(c) Day treatment;

(d) Alcohol and drug abuse group services for youth;

(e) Individual, group and family therapy;

(f) Respite services;

(g) Supported employment services for youth;

(h) Family education and support and family partners;

(i) Youth development and support and youth partners;

(j) Positive behavioral supports (PBIS) in schools;

(k) Transition-age supported and independent living services; and

(*l*) Vocational/technical education services for youth.

(2) There is established the Interagency Coordinating Council for Children and Youth (hereinafter referred to as the "ICCCY"). The ICCCY shall consist of the following membership:

(a) The State Superintendent of Public Education;

(b) The Executive Director of the Mississippi Department of Mental Health;

(c) The Executive Director of the State Department of Health;

(d) The Executive Director of the Department of Human Services;

(e) The Executive Director of the Division of Medicaid, Office of the Governor;

(f) The Executive Director of the State Department of Rehabilitation Services;

(g) The Executive Director of Mississippi Families as Allies for Children's Mental Health, Inc.;

(h) The Attorney General;

(i) A family member of a child or youth in the population named in this chapter designated by Mississippi Families as Allies;

(j) A youth or young adult in the population named in this chapter designated by Mississippi Families as Allies;

(k) A local MAP team coordinator designated by the Department of Mental Health;

(*l*) A child psychiatrist experienced in the public mental health system designated by the Mississippi Psychiatric Association;

(m) An individual with expertise and experience in early childhood education designated jointly by the Department of Mental Health and Mississippi Families as Allies;

(n) A representative of an organization that advocates on behalf of disabled citizens in Mississippi designated by the Department of Mental Health; and

(o) A faculty member or dean from a Mississippi university specializing in training professionals who work in the Mississippi Statewide System of Care designated by the Board of Trustees of State Institutions of Higher Learning.

If a member of the council designates a representative to attend council meetings, the designee shall bring full decision-making authority of the member to the meeting. The council shall select a chairman, who shall serve for a one-year term and may not serve consecutive terms. The council shall adopt internal organizational procedures necessary for efficient operation of the council. Each member of the council shall designate necessary staff of their departments to assist the ICCCY in performing its duties and responsibilities. The ICCCY shall meet and conduct business at least twice annually. The chairman of the ICCCY shall notify all ICCCY members and all other persons who request such notice as to the date, time, place and draft agenda items for each meeting.

(3) The Interagency System of Care Council (ISCC) is created to serve as the state management team for the ICCCY, with the responsibility of collecting

and analyzing data and funding strategies necessary to improve the operation of the Mississippi Statewide System of Care, and to make recommendations to the ICCCY and to the Legislature concerning such strategies on, at a minimum, an annual basis. The System of Care Council also has the responsibility of coordinating the local Multidisciplinary Assessment and Planning (MAP) teams and "A" teams and may apply for grants from public and private sources necessary to carry out its responsibilities. The Interagency System of Care Council shall be comprised of one (1) member from each of the appropriate child-serving divisions or sections of the State Department of Health, the Department of Human Services (Division of Family and Children Services and Division of Youth Services), the State Department of Mental Health (Division of Children and Youth, Bureau of Alcohol and Drug Abuse, and Bureau of Intellectual and Developmental Disabilities), the State Department of Education (Office of Special Education and Office of Healthy Schools), the Division of Medicaid of the Governor's Office, the Department of Rehabilitation Services, and the Attorney General's office. Additional members shall include a family member of a child, youth or transition-age youth representing a family education and support 501(c)3 organization, working with the population named in this chapter designated by Mississippi Families as Allies, an individual with expertise and experience in early childhood education designated jointly by the Department of Mental Health and Mississippi Families as Allies, a local MAP team representative and a local "A" team representative designated by the Department of Mental Health, a probation officer designated by the Department of Corrections, a family member and youth or young adult designated by Mississippi Families as Allies for Children's Mental Health, Inc., (MSFAA), and a family member other than a MSFAA representative to be designated by the Department of Mental Health and the Director of the Compulsory School Attendance Emforcement of the State Department of Education. Appointments to the Interagency System of Care Council shall be made within sixty (60) days after June 30, 2010. The council shall organize by selecting a chairman from its membership to serve on an annual basis, and the chairman may not serve consecutive terms.

(4)(a) As part of the Mississippi Statewide System of Care, there is established a statewide system of local Multidisciplinary Assessment, Planning and Resource (MAP) teams. The MAP teams shall be comprised of one (1) representative each at the county level from the major child-serving public agencies for education, human services, health, mental health and rehabilitative services approved by respective state agencies of the Department of Education, the Department of Human Services, the Department of Health, the Department of Mental Health and the Department of Rehabilitation Services. These agencies shall, by policy, contract or regulation require participation on MAP teams and "A" teams at the county level by the appropriate staff. Three (3) additional members may be added to each team, one (1) of which may be a representative of a family education/support 501(c)3 organization with statewide recognition and specifically established for the population of children defined in Section 43-14-1. The remaining

members will be representatives of significant community-level stakeholders with resources that can benefit the population of children defined in Section 43-14-1. The Department of Education shall assist in recruiting and identifying parents to participate on MAP teams and "A" teams.

(b) For each local existing MAP team that is established pursuant to paragraph (a) of this subsection, there shall also be established an "A" (Adolescent) team which shall work with a MAP team. The "A" teams shall provide System of Care services for youthful offenders who have serious behavioral or emotional disorders. Each "A" team shall be comprised of, at a minimum, the following five (5) members:

(i) A school counselor, mental health therapist or social worker;

(ii) A community mental health professional;

(iii) A social services/child welfare professional;

(iv) A youth court counselor; and

(v) A parent who had a child in the juvenile justice system.

(c) The Interagency Coordinating Council for Children and Youth and the Interagency System of Care Council shall work to develop MAP teams statewide that will serve to become the single point of entry for children and youth about to be placed in out-of-home care for reasons other than parental abuse/neglect.

(5) The Interagency Coordinating Council for Children and Youth may provide input to one another and to the ISCC relative to how each agency utilizes its federal and state statutes, policy requirements and funding streams to identify and/or serve children and youth in the population defined in this section. The ICCCY shall support the implementation of the plans of the respective state agencies for comprehensive, community-based, multidisciplinary care, treatment and placement of these children.

(6) The ICCCY shall oversee a pool of state funds that may be contributed by each participating state agency and additional funds from the Mississippi Tobacco Health Care Expenditure Fund, subject to specific appropriation therefor by the Legislature. Part of this pool of funds shall be available for increasing the present funding levels by matching Medicaid funds in order to increase the existing resources available for necessary community-based services for Medicaid beneficiaries.

(7) The local interagency coordinating care MAP team or "A" team will facilitate the development of the individualized System of Care programs for the population targeted in this section.

(8) Each local MAP team and "A" team shall serve as the single point of entry and re-entry to ensure that comprehensive diagnosis and assessment occur and shall coordinate needed services through the local MAP team and "A" team members and local service providers for the children named in subsection (1). Local children in crisis shall have first priority for access to the MAP team and "A" team processes and local System of Care services.

(9) The Interagency Coordinating Council for Children and Youth shall facilitate monitoring of the performance of local MAP teams.

(10) Each ICCCY member named in subsection (2) of this section shall enter into a binding memorandum of understanding to participate in the

further development and oversight of the Mississippi Statewide System of Care for the children and youth described in this section. The agreement shall outline the system responsibilities in all operational areas, including ensuring representation on MAP teams, funding, data collection, referral of children to MAP teams and "A" teams, and training. The agreement shall be signed and in effect by July 1 of each year.

SOURCES: Laws, 1993, ch. 388, § 1; Laws, 1994, ch. 649, § 11; reenacted and amended, Laws, 1996, ch. 476, § 1; reenacted and amended, Laws, 1998, ch. 383, § 1; reenacted and amended Laws, 2000, ch. 547, § 1; Laws, 2001, ch. 591, § 1; Laws, 2005, ch. 409, § 1; Laws, 2005, ch. 471, § 2; Laws, 2010, ch. 418, § 1, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment rewrote the section.

§ 43-14-3. Powers and responsibilities of Council.

In addition to the specific authority provided in Section 43-14-1, the powers and responsibilities of the Interagency Coordinating Council for Children and Youth shall be as follows:

(a) To serve in an advisory capacity and to provide state level leadership and oversight to the development of the Mississippi Statewide System of Care; and

(b) To insure the creation and availability of an annual pool of funds from each participating agency member of the ICCCY that includes the amount to be contributed by each agency and a process for utilization of those funds.

SOURCES: Laws, 1993, ch. 388, § 2; reenacted and amended, Laws, 1996, ch. 476, § 2; reenacted without change, Laws, 1998, ch. 383, § 2; reenacted without change, Laws, 2000, ch. 547, § 2; Laws, 2001, ch. 591, § 2; Laws, 2005, ch. 409, § 2; Laws, 2010, ch. 418, § 2, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment substituted "Mississippi Statewide System of Care" for "System of Care programs" in (a); and deleted the former last paragraph which read: "This section shall stand repealed from and after July 1, 2010."

§ 43-14-5. Operating fund.

There is created in the State Treasury a special fund into which shall be deposited all funds contributed by the Department of Human Services, State Department of Health, Department of Mental Health, State Department of Rehabilitation Services insofar as recipients are otherwise eligible under the Rehabilitation Act of 1973, as amended, and State Department of Education for the operation of a statewide System of Care by MAP teams and "A" teams utilizing such funds as may be made available to those MAP teams through a Request for Proposal (RFP) approved by the ICCCY.

SOURCES: Laws, 1993, ch. 388, § 3; Laws, 1994, ch. 649, § 12; reenacted and amended, Laws, 1996, ch. 476, § 3; reenacted and amended, Laws, 1998, ch.

383, § 3; reenacted without change, Laws, 2000, ch. 547, § 3; Laws, 2001, ch. 591, § 3; Laws, 2005, ch. 409, § 3; Laws, 2005, ch. 471, § 3; Laws, 2010, ch. 418, § 3, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment deleted the former second paragraph which read: "This section shall stand repealed from and after July 1, 2010."

CHAPTER 15

Child Welfare

ARTICLE 3.

LICENSING OF FAMILY FOSTER HOMES, CHILD-CARING AGENCIES AND CHILD-PLACING AGENCIES.

§ 43-15-121. Injunctions.

In addition to, and notwithstanding, any other remedy provided by law, the division may, in a manner provided by law and upon the advice of the Attorney General who, except as otherwise authorized in Section 7-5-39, shall represent the division in the proceedings, maintain an action in the name of the state for injunction or other process against any person or entity to restrain or prevent the establishment, management or operation of a program or facility or performance of services in violation of this article or rules of the division.

SOURCES: Laws, 2000, ch. 379, § 11; Laws, 2012, ch. 546, § 17, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment inserted "except as otherwise authorized in Section 7-5-39" near the middle, and made minor stylistic changes.

ARTICLE 5.

BABY DROP-OFF LAW.

§ 43-15-201. Emergency medical services provider to take possession of certain abandoned children; guarantee of anonymity of parent surrendering baby under baby drop-off law.

(1) An emergency medical services provider, without a court order, shall take possession of a child who is seventy-two (72) hours old or younger if the child is voluntarily delivered to the provider by the child's parent and the parent did not express an intent to return for the child.

(2) The parent who surrenders the baby shall not be required to provide any information pertaining to his or her identity, nor shall the emergency medical services provider inquire as to same. If the identity of the parent is known to the emergency medical services provider, the emergency medical services provider shall keep the identity confidential.

(3) A female presenting herself to a hospital through the emergency room or otherwise, who is subsequently admitted for purposes of labor and delivery, does not give up the legal protections or anonymity guaranteed under this section. If the mother clearly expresses a desire to voluntarily surrender custody of the newborn after birth, the emergency medical services provider can take possession of the child, without further action by the mother, as if the child had been presented to the emergency medical services provider in the same manner outlined above in subsection (1) of this section.

(a) If the mother expresses a desire to remain anonymous, identifying information may be obtained for purposes of securing payment of labor and delivery costs only. If the birth mother is a minor, the hospital may use the identifying information to secure payment through Medicaid, but shall not notify the minor's parent or guardian without the minor's consent.

(b) The identity of the birth mother shall not be placed on the birth certificate or disclosed to the Department of Human Services.

(4) There is a presumption that by relinquishing a child in accordance with this section, the parent consents to the termination of his or her parental rights with respect to the child. As such, the parent waives the right to notification required by subsequent court proceedings.

(5) An emergency medical services provider who takes possession of a child under this section shall perform any act necessary to protect the physical health or safety of the child.

SOURCES: Laws, 2001, ch. 484, § 1; Laws, 2012, ch. 404, § 1, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment added (2) through (4) and renumered former (2) as (5).

CHAPTER 16

Child Residential Home Notification Act

§ 43-16-21. Court action for injunction or restraining order against home; grounds.

Notwithstanding the existence of any other remedy, the department may, in the manner provided by law, in termtime or in vacation, upon the advice of the Attorney General who, except as otherwise authorized in Section 7-5-39, shall represent the department in the proceedings, maintain an action in the name of the state for an injunction or restraining order to cease the operation of the home, and to provide for the appropriate removal of the children from the home and placement in the custody of the parents or legal guardians, the Department of Human Services, or any other appropriate entity in the discretion of the court. Such action shall be brought in the chancery court or the youth court, as appropriate, of the county in which such child residential home is located, and shall only be initiated for the following violations:

(a) Providing supervision, care, lodging or maintenance for any children in such home without filing notification in accordance with this chapter.

(b) Failure to satisfactorily comply with local health department or State Fire Marshal inspections made pursuant to Section 43-16-15, regarding the health, nutrition, cleanliness, safety, sanitation, written records and discipline policy of such home.

(c) Suspected abuse and/or neglect of the children served by such home, as defined in Section 43-21-105.

SOURCES: Laws, 1989, ch. 493, § 11; Laws, 1999, ch. 328, § 3; Laws, 2012, ch. 546, § 18, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment inserted "except as otherwise authorized in Section 7-5-39" in the first sentence; and deleted "Mississippi Code of 1972" from the end of (c).

CHAPTER 17

Temporary Assistance to Needy Families

§ 43-17-5. Amount of assistance [Repealed effective July 1, 2019].

(1) The amount of Temporary Assistance for Needy Families (TANF) benefits which may be granted for any dependent child and a needy caretaker relative shall be determined by the county department with due regard to the

resources and necessary expenditures of the family and the conditions existing in each case, and in accordance with the rules and regulations made by the Department of Human Services which shall not be less than the Standard of Need in effect for 1988, and shall be sufficient when added to all other income (except that any income specified in the federal Social Security Act, as amended, may be disregarded) and support available to the child to provide such child with a reasonable subsistence compatible with decency and health. The first family member in the dependent child's budget may receive an amount not to exceed One Hundred Ten Dollars ($110.00) per month; the second family member in the dependent child's budget may receive an amount not to exceed Thirty-six Dollars ($36.00) per month; and each additional family member in the dependent child's budget an amount not to exceed Twenty-four Dollars ($24.00) per month. The maximum for any individual family member in the dependent child's budget may be exceeded for foster or medical care or in cases of children with an intellectual disability or a physical disability. TANF benefits granted shall be specifically limited only (a) to children existing or conceived at the time the caretaker relative initially applies and qualifies for such assistance, unless this limitation is specifically waived by the department, or (b) to a child born following a twelve-consecutive-month period of discontinued benefits by the caretaker relative.

(2) TANF benefits in Mississippi shall be provided to the recipient family by an online electronic benefits transfer system.

(3) The Department of Human Services shall deny TANF benefits to the following categories of individuals, except for individuals and families specifically exempt or excluded for good cause as allowed by federal statute or regulation:

(a) Families without a minor child residing with the custodial parent or other adult caretaker relative of the child;

(b) Families which include an adult who has received TANF assistance for sixty (60) months after the commencement of the Mississippi TANF program, whether or not such period of time is consecutive;

(c) Families not assigning to the state any rights a family member may have, on behalf of the family member or of any other person for whom the family member has applied for or is receiving such assistance, to support from any other person, as required by law;

(d) Families who fail to cooperate in establishing paternity or obtaining child support, as required by law;

(e) Any individual who has not attained eighteen (18) years of age, is not married to the head of household, has a minor child at least twelve (12) weeks of age in his or her care, and has not successfully completed a high school education or its equivalent, if such individual does not participate in educational activities directed toward the attainment of a high school diploma or its equivalent, or an alternative educational or training program approved by the department;

(f) Any individual who has not attained eighteen (18) years of age, is not married, has a minor child in his or her care, and does not reside in a place

or residence maintained by a parent, legal guardian or other adult relative or the individual as such parent's, guardian's or adult relative's own home;

(g) Any minor child who has been, or is expected by a parent or other caretaker relative of the child to be, absent from the home for a period of more than thirty (30) days;

(h) Any individual who is a parent or other caretaker relative of a minor child who fails to notify the department of the absence of the minor child from the home for the thirty-day period specified in paragraph (g), by the end of the five-day period that begins with the date that it becomes clear to the individual that the minor child will be absent for the thirty-day period;

(i) Any individual who fails to comply with the provisions of the Employability Development Plan signed by the individual which prescribe those activities designed to help the individual become and remain employed, or to participate satisfactorily in the assigned work activity, as authorized under subsection (6)(c) and (d), or who does not engage in applicant job search activities within the thirty-day period for TANF application approval after receiving the advice and consultation of eligibility workers and/or caseworkers of the department providing a detailed description of available job search venues in the individual's county of residence or the surrounding counties;

(j) A parent or caretaker relative who has not engaged in an allowable work activity once the department determines the parent or caretaker relative is ready to engage in work, or once the parent or caretaker relative has received TANF assistance under the program for twenty-four (24) months, whether or not consecutive, whichever is earlier;

(k) Any individual who is fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the jurisdiction from which the individual flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the individual flees, or who is violating a condition of probation or parole imposed under federal or state law;

(*l*) Aliens who are not qualified under federal law;

(m) For a period of ten (10) years following conviction, individuals convicted in federal or state court of having made a fraudulent statement or representation with respect to the individual's place of residence in order to receive TANF, food stamps or Supplemental Security Income (SSI) assistance under Title XVI or Title XIX simultaneously from two (2) or more states; and

(n) Individuals who are recipients of federal Supplemental Security Income (SSI) assistance.

(4)(a) Any person who is otherwise eligible for TANF benefits, including custodial and noncustodial parents, shall be required to attend school and meet the monthly attendance requirement as provided in this subsection if all of the following apply:

(i) The person is under age twenty (20);

(ii) The person has not graduated from a public or private high school or obtained a GED equivalent;

(iii) The person is physically able to attend school and is not excused from attending school; and

(iv) If the person is a parent or caretaker relative with whom a dependent child is living, child care is available for the child.

The monthly attendance requirement under this subsection shall be attendance at the school in which the person is enrolled for each day during a month that the school conducts classes in which the person is enrolled, with not more than two (2) absences during the month for reasons other than the reasons listed in paragraph (e)(iv) of this subsection. Persons who fail to meet participation requirements in this subsection shall be subject to sanctions as provided in paragraph (f) of this subsection.

(b) As used in this subsection, "school" means any one (1) of the following:

(i) A school as defined in Section 37-13-91(2);

(ii) A vocational, technical and adult education program; or

(iii) A course of study meeting the standards established by the State Department of Education for the granting of a declaration of equivalency of high school graduation.

(c) If any compulsory-school-age child, as defined in Section 37-13-91(2), to which TANF eligibility requirements apply is not in compliance with the compulsory school attendance requirements of Section 37-13-91(6), the superintendent of schools of the school district in which the child is enrolled or eligible to attend shall notify the county department of human services of the child's noncompliance. The Department of Human Services shall review school attendance information as provided under this paragraph at all initial eligibility determinations and upon subsequent report of unsatisfactory attendance.

(d) The signature of a person on an application for TANF benefits constitutes permission for the release of school attendance records for that person or for any child residing with that person. The department shall request information from the child's school district about the child's attendance in the school district's most recently completed semester of attendance. If information about the child's previous school attendance is not available or cannot be verified, the department shall require the child to meet the monthly attendance requirement for one (1) semester or until the information is obtained. The department shall use the attendance information provided by a school district to verify attendance for a child. The department shall review with the parent or caretaker relative a child's claim that he or she has a good cause for not attending school.

A school district shall provide information to the department about the attendance of a child who is enrolled in a public school in the district within five (5) working days of the receipt of a written request for that information from the department. The school district shall define how many hours of attendance count as a full day and shall provide that information, upon request, to the department. In reporting attendance, the school district may add partial days' absence together to constitute a full day's absence.

If a school district fails to provide to the department the information about the school attendance of any child within fifteen (15) working days after a written request, the department shall notify the Department of Audit within three (3) working days of the school district's failure to comply with that requirement. The Department of Audit shall begin audit proceedings within five (5) working days of notification by the Department of Human Services to determine the school district's compliance with the requirements of this subsection (4). If the Department of Audit finds that the school district is not in compliance with the requirements of this subsection, the school district shall be penalized as follows: The Department of Audit shall notify the State Department of Education of the school district's noncompliance, and the Department of Education shall reduce the calculation of the school district's average daily attendance (ADA) that is used to determine the allocation of Mississippi Adequate Education Program funds by the number of children for which the district has failed to provide to the Department of Human Services the required information about the school attendance of those children. The reduction in the calculation of the school district's ADA under this paragraph shall be effective for a period of one (1) year.

(e) A child who is required to attend school to meet the requirements under this subsection shall comply except when there is good cause, which shall be demonstrated by any of the following circumstances:

(i) The minor parent is the caretaker of a child less than twelve (12) weeks old; or

(ii) The department determines that child care services are necessary for the minor parent to attend school and there is no child care available; or

(iii) The child is prohibited by the school district from attending school and an expulsion is pending. This exemption no longer applies once the teenager has been expelled; however, a teenager who has been expelled and is making satisfactory progress towards obtaining a GED equivalent shall be eligible for TANF benefits; or

(iv) The child failed to attend school for one or more of the following reasons:

1. Illness, injury or incapacity of the child or the minor parent's child;
2. Court-required appearances or temporary incarceration;
3. Medical or dental appointments for the child or minor parent's child;
4. Death of a close relative;
5. Observance of a religious holiday;
6. Family emergency;
7. Breakdown in transportation;
8. Suspension; or
9. Any other circumstance beyond the control of the child, as defined in regulations of the department.

(f) Upon determination that a child has failed without good cause to attend school as required, the department shall provide written notice to the

parent or caretaker relative (whoever is the primary recipient of the TANF benefits) that specifies:

(i) That the family will be sanctioned in the next possible payment month because the child who is required to attend school has failed to meet the attendance requirement of this subsection;

(ii) The beginning date of the sanction, and the child to whom the sanction applies;

(iii) The right of the child's parents or caretaker relative (whoever is the primary recipient of the TANF benefits) to request a fair hearing under this subsection.

The child's parent or caretaker relative (whoever is the primary recipient of the TANF benefits) may request a fair hearing on the department's determination that the child has not been attending school. If the child's parents or caretaker relative does not request a fair hearing under this subsection, or if, after a fair hearing has been held, the hearing officer finds that the child without good cause has failed to meet the monthly attendance requirement, the department shall discontinue or deny TANF benefits to the child thirteen (13) years old, or older, in the next possible payment month. The department shall discontinue or deny twenty-five percent (25%) of the family grant when a child six (6) through twelve (12) years of age without good cause has failed to meet the monthly attendance requirement. Both the child and family sanction may apply when children in both age groups fail to meet the attendance requirement without good cause. A sanction applied under this subsection shall be effective for one (1) month for each month that the child failed to meet the monthly attendance requirement. In the case of a dropout, the sanction shall remain in force until the parent or caretaker relative provides written proof from the school district that the child has reenrolled and met the monthly attendance requirement for one (1) calendar month. Any month in which school is in session for at least ten (10) days during the month may be used to meet the attendance requirement under this subsection. This includes attendance at summer school. The sanction shall be removed the next possible payment month.

(5) All parents or caretaker relatives shall have their dependent children receive vaccinations and booster vaccinations against those diseases specified by the State Health Officer under Section 41-23-37 in accordance with the vaccination and booster vaccination schedule prescribed by the State Health Officer for children of that age, in order for the parents or caretaker relatives to be eligible or remain eligible to receive TANF benefits. Proof of having received such vaccinations and booster vaccinations shall be given by presenting the certificates of vaccination issued by any health care provider licensed to administer vaccinations, and submitted on forms specified by the State Board of Health. If the parents without good cause do not have their dependent children receive the vaccinations and booster vaccinations as required by this subsection and they fail to comply after thirty (30) days' notice, the department shall sanction the family's TANF benefits by twenty-five percent (25%) for the next payment month and each subsequent payment month until the requirements of this subsection are met.

(6)(a) If the parent or caretaker relative applying for TANF assistance is work eligible, as determined by the Department of Human Services, the person shall be required to engage in an allowable work activity once the department determines the parent or caretaker relative is determined work eligible, or once the parent or caretaker relative has received TANF assistance under the program for twenty-four (24) months, whether or not consecutive, whichever is earlier. No TANF benefits shall be given to any person to whom this section applies who fails without good cause to comply with the Employability Development Plan prepared by the department for the person, or who has refused to accept a referral or offer of employment, training or education in which he or she is able to engage, subject to the penalties prescribed in subsection (6)(e). A person shall be deemed to have refused to accept a referral or offer of employment, training or education if he or she:

(i) Willfully fails to report for an interview with respect to employment when requested to do so by the department; or

(ii) Willfully fails to report to the department the result of a referral to employment; or

(iii) Willfully fails to report for allowable work activities as prescribed in subsection (6)(c) and (d).

(b) The Department of Human Services shall operate a statewide work program for TANF recipients to provide work activities and supportive services to enable families to become self-sufficient and improve their competitive position in the workforce in accordance with the requirements of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193), as amended, and the regulations promulgated thereunder, and the Deficit Reduction Act of 2005 (Public Law 109-171), as amended. Within sixty (60) days after the initial application for TANF benefits, the TANF recipient must participate in a job search skills training workshop or a job readiness program, which shall include r/Aesum/Ae writing, job search skills, employability skills and, if available at no charge, the General Aptitude Test Battery or its equivalent. All adults who are not specifically exempt shall be referred by the department for allowable work activities. An adult may be exempt from the mandatory work activity requirement for the following reasons:

(i) Incapacity;

(ii) Temporary illness or injury, verified by physician's certificate;

(iii) Is in the third trimester of pregnancy, and there are complications verified by the certificate of a physician, nurse practitioner, physician assistant, or any other licensed health care professional practicing under a protocol with a licensed physician;

(iv) Caretaker of a child under twelve (12) months, for not more than twelve (12) months of the sixty-month maximum benefit period;

(v) Caretaker of an ill or incapacitated person, as verified by physician's certificate;

(vi) Age, if over sixty (60) or under eighteen (18) years of age;

(vii) Receiving treatment for substance abuse, if the person is in compliance with the substance abuse treatment plan;

(viii) In a two-parent family, the caretaker of a severely disabled child, as verified by a physician's certificate; or

(ix) History of having been a victim of domestic violence, which has been reported as required by state law and is substantiated by police reports or court records, and being at risk of further domestic violence, shall be exempt for a period as deemed necessary by the department but not to exceed a total of twelve (12) months, which need not be consecutive, in the sixty-month maximum benefit period. For the purposes of this subparagraph (ix), "domestic violence" means that an individual has been subjected to:

1. Physical acts that resulted in, or threatened to result in, physical injury to the individual;

2. Sexual abuse;

3. Sexual activity involving a dependent child;

4. Being forced as the caretaker relative of a dependent child to engage in nonconsensual sexual acts or activities;

5. Threats of, or attempts at, physical or sexual abuse;

6. Mental abuse; or

7. Neglect or deprivation of medical care.

(c) For all families, all adults who are not specifically exempt shall be required to participate in work activities for at least the minimum average number of hours per week specified by federal law or regulation, not fewer than twenty (20) hours per week (thirty-five (35) hours per week for two-parent families) of which are attributable to the following allowable work activities:

(i) Unsubsidized employment;

(ii) Subsidized private employment;

(iii) Subsidized public employment;

(iv) Work experience (including work associated with the refurbishing of publicly assisted housing), if sufficient private employment is not available;

(v) On-the-job training;

(vi) Job search and job readiness assistance consistent with federal TANF regulations;

(vii) Community service programs;

(viii) Vocational educational training (not to exceed twelve (12) months with respect to any individual);

(ix) The provision of child care services to an individual who is participating in a community service program;

(x) Satisfactory attendance at high school or in a course of study leading to a high school equivalency certificate, for heads of household under age twenty (20) who have not completed high school or received such certificate;

(xi) Education directly related to employment, for heads of household under age twenty (20) who have not completed high school or received such equivalency certificate.

(d) The following are allowable work activities which may be attributable to hours in excess of the minimum specified in subsection (6)(c):

(i) Job skills training directly related to employment;

(ii) Education directly related to employment for individuals who have not completed high school or received a high school equivalency certificate;

(iii) Satisfactory attendance at high school or in a course of study leading to a high school equivalency, for individuals who have not completed high school or received such equivalency certificate;

(iv) Job search and job readiness assistance consistent with federal TANF regulations.

(e) If any adult or caretaker relative refuses to participate in allowable work activity as required under this subsection (6), the following full family TANF benefit penalty will apply, subject to due process to include notification, conciliation and a hearing if requested by the recipient:

(i) For the first violation, the department shall terminate the TANF assistance otherwise payable to the family for a two-month period or until the person has complied with the required work activity, whichever is longer;

(ii) For the second violation, the department shall terminate the TANF assistance otherwise payable to the family for a six-month period or until the person has complied with the required work activity, whichever is longer;

(iii) For the third violation, the department shall terminate the TANF assistance otherwise payable to the family for a twelve-month period or until the person has complied with the required work activity, whichever is longer;

(iv) For the fourth violation, the person shall be permanently disqualified.

For a two-parent family, unless prohibited by state or federal law, Medicaid assistance shall be terminated only for the person whose failure to participate in allowable work activity caused the family's TANF assistance to be sanctioned under this subsection (6) (e), unless an individual is pregnant, but shall not be terminated for any other person in the family who is meeting that person's applicable work requirement or who is not required to work. Minor children shall continue to be eligible for Medicaid benefits regardless of the disqualification of their parent or caretaker relative for TANF assistance under this subsection (6), unless prohibited by state or federal law.

(f) Any person enrolled in a two-year or four-year college program who meets the eligibility requirements to receive TANF benefits, and who is meeting the applicable work requirements and all other applicable requirements of the TANF program, shall continue to be eligible for TANF benefits while enrolled in the college program for as long as the person meets the requirements of the TANF program, unless prohibited by federal law.

(g) No adult in a work activity required under this subsection (6) shall be employed or assigned (i) when any other individual is on layoff from the same or any substantially equivalent job within six (6) months before the date of the TANF recipient's employment or assignment; or (ii) if the employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction of its workforce in order to fill the vacancy so created with an adult receiving TANF assistance. The Mississippi Department of Employment Security, established under Section 71-5-101, shall appoint one or more impartial hearing officers to hear and decide claims by employees of violations of this paragraph (g). The hearing officer shall hear all the evidence with respect to any claim made hereunder and such additional evidence as he may require and shall make a determination and the reason therefor. The claimant shall be promptly notified of the decision of the hearing officer and the reason therefor. Within ten (10) days after the decision of the hearing officer has become final, any party aggrieved thereby may secure judicial review thereof by commencing an action, in the circuit court of the county in which the claimant resides, against the department for the review of such decision, in which action any other party to the proceeding before the hearing officer shall be made a defendant. Any such appeal shall be on the record which shall be certified to the court by the department in the manner provided in Section 71-5-531, and the jurisdiction of the court shall be confined to questions of law which shall render its decision as provided in that section.

(7) The Department of Human Services may provide child care for eligible participants who require such care so that they may accept employment or remain employed. The department may also provide child care for those participating in the TANF program when it is determined that they are satisfactorily involved in education, training or other allowable work activities. The department may contract with Head Start agencies to provide child care services to TANF recipients. The department may also arrange for child care by use of contract or vouchers, provide vouchers in advance to a caretaker relative, reimburse a child care provider, or use any other arrangement deemed appropriate by the department, and may establish different reimbursement rates for child care services depending on the category of the facility or home. Any center-based or group home child care facility under this subsection shall be licensed by the State Department of Health pursuant to law. When child care is being provided in the child's own home, in the home of a relative of the child, or in any other unlicensed setting, the provision of such child care may be monitored on a random basis by the Department of Human Services or the State Department of Health. Transitional child care assistance may be continued if it is necessary for parents to maintain employment once support has ended, unless prohibited under state or federal law. Transitional child care assistance may be provided for up to twenty-four (24) months after the last month during which the family was eligible for TANF assistance, if federal funds are available for such child care assistance.

(8) The Department of Human Services may provide transportation or provide reasonable reimbursement for transportation expenses that are nec-

essary for individuals to be able to participate in allowable work activity under the TANF program.

(9) Medicaid assistance shall be provided to a family of TANF program participants for up to twenty-four (24) consecutive calendar months following the month in which the participating family would be ineligible for TANF benefits because of increased income, expiration of earned income disregards, or increased hours of employment of the caretaker relative; however, Medicaid assistance for more than twelve (12) months may be provided only if a federal waiver is obtained to provide such assistance for more than twelve (12) months and federal and state funds are available to provide such assistance.

(10) The department shall require applicants for and recipients of public assistance from the department to sign a personal responsibility contract that will require the applicant or recipient to acknowledge his or her responsibilities to the state.

(11) The department shall enter into an agreement with the State Personnel Board and other state agencies that will allow those TANF participants who qualify for vacant jobs within state agencies to be placed in state jobs. State agencies participating in the TANF work program shall receive any and all benefits received by employers in the private sector for hiring TANF recipients. This subsection (11) shall be effective only if the state obtains any necessary federal waiver or approval and if federal funds are available therefor.

(12) Any unspent TANF funds remaining from the prior fiscal year may be expended for any TANF allowable activities.

(13) The Mississippi Department of Human Services shall provide TANF applicants information and referral to programs that provide information about birth control, prenatal health care, abstinence education, marriage education, family preservation and fatherhood.

(14) No new TANF program requirement or restriction affecting a person's eligibility for TANF assistance, or allowable work activity, which is not mandated by federal law or regulation may be implemented by the Department of Human Services after July 1, 2004, unless such is specifically authorized by an amendment to this section by the Legislature.

SOURCES: Codes, 1942, § 7173; Laws, 1940, ch. 294; Laws, 1944, ch. 292, § 1; Laws, 1957, Ex Sess, ch. 22; Laws, 1962, ch. 559, § 2; Laws, 1968, ch. 562, § 3; Laws, 1978, ch. 303, § 1; Laws, 1985, ch. 383, § 3; Laws, 1993, ch. 614, § 11; Laws, 1994, ch. 582, § 6; Laws, 1997, ch. 316, § 3; Laws, 1999, ch. 390, § 1; Laws, 2004, ch. 572, § 49; Laws, 2006, ch. 547, § 1; Laws, 2008, ch. 533, § 1; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 49; Laws, 2010, ch. 476, § 72; Laws, 2010, ch. 559, §49; Laws, 2011, ch. 471, § 50; Laws, 2012, ch. 515, § 50, eff from and after July 1, 2012.

Joint Legislative Committee Note — Section 72 of ch. 476, Laws of 2010, effective from and after passage (approved April 1, 2010), amended this section. Section 49 of ch. 559, Laws of 2010, effective from and after July 1, 2010, reenacted this section. As set out above, this section reflects the language of both acts pursuant to Section 1-1-109, which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code

section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the July 22, 2010, meeting of the Committee.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, and as amended by Laws of 2012, ch. 515, § 58, provides:

"SECTION 60. This act shall stand repealed on July 1, 2019."

Amendment Notes — The first 2010 amendment (ch. 476) substituted "in cases of children with an intellectual disability or a physical disability" for "in cases of mentally retarded or physically handicapped children" at the end of the next-to-last sentence of (1); and substituted "under Section 41-23-37" for "pursuant to Section 41-23-37" in the first sentence of (5).

The second 2010 amendment (ch. 559) reenacted the section without change.

The 2011 amendment substituted "July 1, 2014" for "July 1, 2011" in (15).

The 2012 amendment deleted former (15) which read: "This section shall stand repealed on July 1, 2014."

Federal Aspects — The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 is codified primarily as 8 USCS §§ 1611 et seq. and 42 USCS §§ 601 et seq.

CHAPTER 19

Support of Natural Children

CHILD SUPPORT UNIT

§ 43-19-31. Child support unit authorized; purposes.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in (*l*)(iii)2 and (n). The word "and" was deleted at the end of (*l*) (iii)2 and added "and" at the end of (n). The Joint Committee ratified the correction at its July 22, 2010, meeting. Since the language of the section as it appears in the main volume is correct, it is not set out in the supplement.

§ 43-19-34. Stipulated agreement for modification of support order; Child Support Unit authorized to send motion and notice of intent to modify; reviews for possible modification to be conducted on 3-year cycle; only upward adjustments to be ordered retroactively; noncustodial parent's arrearage not to bar review or downward modification.

(1) In lieu of legal proceedings instituted to obtain a modification for an order for support, a written stipulated agreement for modification executed by the responsible parent when acknowledged before a clerk of the court having jurisdiction over those matters or a notary public and filed with and approved by the judge of that court shall have the same force and effect, retroactively and prospectively, in accordance with the terms of the agreement as an order for modification of support entered by the court, and shall be enforceable and subject to later modification in the same manner as is provided by law for orders of the court in those cases.

(2) With respect to a child support order in cases initiated or enforced by the Department of Human Services under Title IV-D of the Social Security Act, in which the department has determined that a modification is appropriate, the department shall send a motion and notice of intent to modify the order, together with the proposed modification of the order under this section to the last known mailing address of the defendant. The notice shall specify the date and time certain of the hearing and shall be sent by certified mail, restricted delivery, return receipt requested; notice shall be deemed complete as of the date of delivery as evidenced by the return receipt. The required notice may also be delivered by personal service in accordance with Rule 4 of the Mississippi Rules of Civil Procedure insofar as it may be applied to service of an administrative order or notice. The defendant may accept the proposed modification by signing and returning it to the department before the date of hearing for presentation to the court for approval. If the defendant does not sign and return the proposed modification, the court shall on the date and time previously set for hearing review the proposal and make a determination as to whether it should be approved, in whole or in part.

(3) Every three (3) years, the Department of Human Services shall notify both parents of their right to request a review, and upon the request of either parent, or if there is an assignment under Section 43-19-35, the department, after a review and determination of appropriateness, or either parent may seek an adjustment to a support order being enforced under Section 43-19-31 in accordance with the guidelines established under Section 43-19-101, if the amount of the child support award under the order differs from the amount that would be awarded in accordance with the guidelines, taking into account the best interests of the child involved. If a recipient of Title IV-D services receives TANF, the Department of Human Services shall conduct a review every three (3) years and, after a determination of appropriateness, shall seek an adjustment to a support order according to the guidelines under Section 43-19-101. No proof of a material change in circumstances is necessary in the

three-year review for adjustment under this subsection (3). A preexisting arrearage in support payments shall not serve as a bar to the department's review and adjustment procedure. Proof of a material change in circumstances is necessary for modification outside the three-year cycle.

(4) Any order for the support of minor children, whether entered through the judicial system or through an expedited process, shall not be subject to a downward retroactive modification. An upward retroactive modification may be ordered back to the date of the event justifying the upward modification.

(5) If a downward modification is determined to be warranted under the guidelines contained in subsection (3), the noncustodial parent's arrearage, if any, shall not be a basis for contesting the downward modification in any later legal proceedings.

SOURCES: Laws, 1999, ch. 512, § 12; Laws, 2000, ch. 530, § 1; Laws, 2007, ch. 548, § 1; Laws, 2010, ch. 465, § 4; Laws, 2011, ch. 530, § 8; Laws, 2012, ch. 552, § 1, eff from and after passage (approved May 22, 2012.)

Amendment Notes — The 2010 amendment substituted "July 1, 2011" for "July 1, 2010" in (6).

The 2011 amendment in (3), inserted "the Department of Human services shall notify both parents of their right to request a review, and" following "Every three (3) years" in the first sentence, added the second sentence; and deleted former (6) which read: "This section shall stand repealed on July 1, 2011."

The 2012 amendment deleted "upon the request of the Department of Human Services or of either parent" following "Section 43-19-35" in the first sentence of (3).

Cross References — Temporary Assistance to Needy Families (TANF) program, see §§ 43-17-1 et seq.

§ 43-19-45. State parent locator service; cooperation of state agencies and the like with Child Support Unit; confidentiality of records; authority to request employment verification, address and social security number of absent or nonsupporting parent or alleged parent; confidentiality of records; penalties [Repealed effective July 1, 2019].

(1) The Child Support Unit shall establish a state parent locator service for the purpose of locating absent and nonsupporting parents and alleged parents, which will utilize all appropriate public and private locator sources. In order to carry out the responsibilities imposed under Sections 43-19-31 through 43-19-53, the Child Support Unit may secure, by administrative subpoena from the customer records of public utilities and cable television companies, the names and addresses of individuals and the names and addresses of employers of such individuals that would enable the location of parents or alleged parents who have a duty to provide support and maintenance for their children. The Child Support Unit may also administratively subpoena any and all financial information, including account numbers, names and social security numbers of record for assets, accounts, and account balances from any individual, financial institution, business or other entity, public or private, needed to establish, modify or enforce a support order. No

entity complying with an administrative subpoena to supply the requested information of whatever nature shall be liable in any civil action or proceeding on account of such compliance. Full faith and credit shall be given to all uniform administrative subpoenas issued by other state child support units. The recipient of an administrative subpoena shall supply the Child Support Unit, other state and federal IV-D agencies, its attorneys, investigators, probation officers, county or district attorneys in this state, all information relative to the location, employment, employment-related benefits including, but not limited to, availability of medical insurance, income and property of such parents and alleged parents and with all information on hand relative to the location and prosecution of any person who has, by means of a false statement or misrepresentation or by impersonation or other fraudulent device, obtained Temporary Assistance for Needy Families (TANF) to which he or she was not entitled, notwithstanding any provision of law making such information confidential. The Mississippi Department of Information Technology Services and any other agency in this state using the facilities of the Mississippi Department of Information Technology Services are directed to permit the Child Support Unit access to their files, inclusive of those maintained for other state agencies, for the purpose of locating absent and nonsupporting parents and alleged parents, except to the extent that any such access would violate any valid federal statute or regulation issued pursuant thereto. The Child Support Unit, other state and federal IV-D agencies, its attorneys, investigators, probation officers, or county or district attorneys, shall use such information only for the purpose of investigating or enforcing the support liability of such absent parents or alleged parents or for the prosecution of other persons mentioned herein. Neither the Child Support Unit nor those authorities shall use the information, or disclose it, for any other purpose. All records maintained pursuant to the provisions of Sections 43-19-31 through 43-19-53 shall be confidential and shall be available only to the Child Support Unit, other state and federal IV-D agencies, the attorneys, investigators and other staff employed or under contract under Sections 43-19-31 through 43-19-53, district or county attorneys, probation departments, child support units in other states, and courts having jurisdiction in paternity, support or abandonment proceedings. The Child Support Unit may release to the public the name, photo, last-known address, arrearage amount and other necessary information of a parent who has a judgment against him for child support and is currently in arrears in the payment of this support. Such release may be included in a "Most Wanted List" or other media in order to solicit assistance.

(2) The Child Support Unit shall have the authority to secure information from the records of the Mississippi Department of Employment Security that may be necessary to locate absent and nonsupporting parents and alleged parents under the provisions of Sections 43-19-31 through 43-19-53. Upon request of the Child Support Unit, all departments, boards, bureaus and agencies of the state shall provide to the Child Support Unit verification of employment or payment and the address and social security number of any

person designated as an absent or nonsupporting parent or alleged parent. In addition, upon request of the Child Support Unit, the Mississippi Department of Employment Security, or any private employer or payor of any income to a person designated as an absent or nonsupporting parent or alleged parent, shall provide to the Child Support Unit verification of employment or payment and the address and social security number of the person so designated. Full faith and credit shall be given to such notices issued by child support units in other states. All such records and information shall be confidential and shall not be used for any purposes other than those specified by Sections 43-19-31 through 43-19-53. The violation of the provisions of this subsection shall be unlawful and any person convicted of violating the provisions of this subsection shall be guilty of a misdemeanor and shall pay a fine of not more than Two Hundred Dollars ($200.00).

(3) Federal and state IV-D agencies shall have access to the state parent locator service and any system used by the Child Support Unit to locate an individual for purposes relating to motor vehicles or law enforcement. No employer or other source of income who complies with this section shall be liable in any civil action or proceeding brought by the obligor or obligee on account of such compliance.

SOURCES: Laws, 1976, ch. 483, § 8; Laws, 1988, ch. 345; Laws, 1990, ch. 543, § 1; Laws, 1993, ch. 333, § 1; Laws, 1993, ch. 525, § 1; Laws, 1997, ch. 588, § 13; Laws, 2000, ch. 530, § 2; Laws, 2004, ch. 572, § 50; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 50; reenacted without change, Laws, 2010, ch. 559, § 50; reenacted without change, Laws, 2011, ch. 471, § 51; reenacted and amended, Laws, 2012, ch. 515, § 51, eff from and after July 1, 2012.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by Laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, and as amended by Laws of 2012, ch. 515, § 58, provides:

"SECTION 60. This act shall stand repealed on July 1, 2019."

Amendment Notes — The 2010 amendment reenacted the section without change.

The 2011 amendment reenacted the section without change.

The 2012 amendment reenacted and amended the section by adding commas after "may secure" and "television companies" in the second sentence in (1).

§ 43-19-46. Report by employer to Directory of New Hires [Repealed effective July 1, 2019].

(1) Each employer paying wages, salary or commission and doing business in Mississippi shall report to the Directory of New Hires within the Mississippi Department of Human Services:

(a) The hiring of any person who resides or works in this state to whom the employer anticipates paying wages, salary or commission; and

(b) The hiring or return to work of any employee who was laid off, furloughed, separated, granted leave without pay or was terminated from employment.

(2) Employers shall report, by mailing or by other means authorized by the Department of Human Services, a copy of the employee's W-4 form or its equivalent that will result in timely reporting. Each employer shall submit reports within fifteen (15) days of the hiring, rehiring or return to work of the employee. The report shall contain:

(a) The employee's name, address, social security number and the date of birth;

(b) The employer's name, address, and federal and state withholding tax identification numbers; and

(c) The date upon which the employee began or resumed employment, or is scheduled to begin or otherwise resume employment.

(3) The department shall retain the information, which shall be forwarded to the federal registry of new hires.

(4) The Department of Human Services may operate the program, may enter into a mutual agreement with the Mississippi Department of Employment Security or the Department of Revenue, or both, for the operation of the Directory of New Hires Program, or the Department of Human Services may contract for that service, in which case the department shall maintain administrative control of the program.

(5) In cases in which an employer fails to report information, as required by this section, an administratively levied civil penalty in an amount not to exceed Five Hundred Dollars ($500.00) shall apply if the failure is the result of a conspiracy between the employer and employee to not supply the required report or to supply a false or incomplete report. The penalty shall otherwise not exceed Twenty-five Dollars ($25.00). Appeal shall be as provided in Section 43-19-58.

SOURCES: Laws, 1997, ch. 588, § 4; Laws, 2004, ch. 572, § 51; Laws, 2007, ch. 336, § 1; reenacted without change, Laws, 2008, 1st Ex Sess, ch. 30, § 51; Laws, 2011, ch. 471, § 52; Laws, 2011, ch. 530, § 9, eff from and after July 1, 2011.

Joint Legislative Committee Note — Section 52 of ch. 471, Laws of 2011, effective from and after July 1, 2011 (approved March 30, 2011), amended this section. Section 9 of ch. 530, Laws of 2011, effective from and after July 1, 2011 (approved April 26, 2011), also amended this section. As set out above, this section reflects the language of Section 9 of ch. 530, Laws of 2011, pursuant to Section 1-3-79, which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Note — Laws of 2004, ch. 572, § 60, as amended by laws of 2008, 1st Ex Sess, ch. 30, § 58, as amended by Laws of 2010, ch. 559, § 58, as amended by Laws of 2011, ch. 471, § 59, and as amended by Laws of 2012, ch. 515, § 58 provides:

"SECTION 60. This act shall stand repealed on July 1, 2019."

Amendment Notes — The 2010 amendment reenacted and amended the section and substituted "July 1, 2011" for "July 1, 2010" in (6).

The first 2011 amendment (ch. 471), substituted "Department of Revenue" for "State Tax Commission" in (4); and substituted "July 1, 2014" for "July 1, 2011" at the end of (6).

The second 2011 amendment (ch. 530), substituted "Department of Revenue" for "State Tax Commission" in (4); and deleted former (6) which read: "This section shall stand repealed on July 1, 2011."

§ 43-19-47. Employment by child support unit of staff attorneys.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the second sentence of (1) by substituting "The annual salary of each of the attorneys" for "The qualifications and annual salary of each of the attorneys" at the beginning. The Joint Committee ratified the correction at its July 22, 2010, meeting. Since the language of the section as it appears in the main volume is correct, it is not set out in the supplement.

CHILD SUPPORT AWARD GUIDELINES

Sec.
43-19-101. Child support award guidelines.
43-19-103. Criteria for overcoming presumption that guidelines are appropriate.

§ 43-19-101. Child support award guidelines.

(1) The following child support award guidelines shall be a rebuttable presumption in all judicial or administrative proceedings regarding the awarding or modifying of child support awards in this state:

Number Of Children Due Support	Percentage Of Adjusted Gross Income That Should Be Awarded For Support
1	14%
2	20%
3	22%
4	24%
5 or more	26%

(2) The guidelines provided for in subsection (1) of this section apply unless the judicial or administrative body awarding or modifying the child support award makes a written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case as determined under the criteria specified in Section 43-19-103.

(3) The amount of "adjusted gross income" as that term is used in subsection (1) of this section shall be calculated as follows:

(a) Determine gross income from all potential sources that may reasonably be expected to be available to the absent parent including, but not limited to, the following: wages and salary income; income from self employment; income from commissions; income from investments, including dividends, interest income and income on any trust account or property; absent parent's portion of any joint income of both parents; workers' compensation, disability, unemployment, annuity and retirement benefits, including an individual retirement account (IRA); any other payments made

by any person, private entity, federal or state government or any unit of local government; alimony; any income earned from an interest in or from inherited property; any other form of earned income; and gross income shall exclude any monetary benefits derived from a second household, such as income of the absent parent's current spouse;

(b) Subtract the following legally mandated deductions:

(i) Federal, state and local taxes. Contributions to the payment of taxes over and beyond the actual liability for the taxable year shall not be considered a mandatory deduction;

(ii) Social security contributions;

(iii) Retirement and disability contributions except any voluntary retirement and disability contributions;

(c) If the absent parent is subject to an existing court order for another child or children, subtract the amount of that court-ordered support;

(d) If the absent parent is also the parent of another child or other children residing with him, then the court may subtract an amount that it deems appropriate to account for the needs of said child or children;

(e) Compute the total annual amount of adjusted gross income based on paragraphs (a) through (d), then divide this amount by twelve (12) to obtain the monthly amount of adjusted gross income.

Upon conclusion of the calculation of paragraphs (a) through (e), multiply the monthly amount of adjusted gross income by the appropriate percentage designated in subsection (1) to arrive at the amount of the monthly child support award.

(4) In cases in which the adjusted gross income as defined in this section is more than Fifty Thousand Dollars ($50,000.00) or less than Five Thousand Dollars ($5,000.00), the court shall make a written finding in the record as to whether or not the application of the guidelines established in this section is reasonable.

(5) The Department of Human Services shall review the appropriateness of these guidelines beginning January 1, 1994, and every four (4) years thereafter and report its findings to the Legislature no later than the first day of the regular legislative session of that year. The Legislature shall thereafter amend these guidelines when it finds that amendment is necessary to ensure that equitable support is being awarded in all cases involving the support of minor children.

(6) All orders involving support of minor children, as a matter of law, shall include reasonable medical support. Notice to the obligated parent's employer that medical support has been ordered shall be on a form as prescribed by the Department of Human Services. In any case in which the support of any child is involved, the court shall make the following findings either on the record or in the judgment:

(a) The availability to all parties of health insurance coverage for the child(ren);

(b) The cost of health insurance coverage to all parties.

The court shall then make appropriate provisions in the judgment for the provision of health insurance coverage for the child(ren) in the manner that is

in the best interests of the child(ren). If the court requires the custodial parent to obtain the coverage then its cost shall be taken into account in establishing the child support award. If the court determines that health insurance coverage is not available to any party or that it is not available to either party at a cost that is reasonable as compared to the income of the parties, then the court shall make specific findings as to such either on the record or in the judgment. In that event, the court shall make appropriate provisions in the judgment for the payment of medical expenses of the child(ren) in the absence of health insurance coverage.

SOURCES: Laws, 1989, ch. 439, § 1; Laws, 1990, ch. 543, § 2; Laws, 2000, ch. 530, § 3; Laws, 2004, ch. 582, § 1; Laws, 2012, ch. 552, § 2, eff from and after passage (approved May 22, 2012.)

Amendment Notes — The 2012 amendment substituted "obligated parent's employer" for "noncustodial parent's employer" in the second sentence of (6).

JUDICIAL DECISIONS

2. Applicability.
2.5. Guidelines; adherence to.
3. Guidelines; deviation from.
4. Findings of fact.
6. Modification of support.

2. Applicability.

Chancellor did not err by using a mentally disabled father's Supplemental Security Income (SSI) benefits to calculate child support pursuant to Miss. Code Ann. § 43-19-101, though the chancellor was not required to consider SSI benefits in determining whether and in what amount to award child support. The chancellor properly utilized discretion based on the facts of the particular case. However, pursuant to 42 U.S.C.S. § 407(a), the SSI payments were not subject to a withholding order, attachment, garnishment, or other legal process to satisfy the father's child-support obligation. Barnes v. Dep't of Human Servs., 42 So. 3d 10 (Miss. 2010), writ of certiorari denied by 131 S. Ct. 1487, 179 L. Ed. 2d 321, 2011 U.S. LEXIS 1613, 79 U.S.L.W. 3476 (U.S. 2011).

Escalation clause was enforceable and evidence of the parties' actions indicated that the intent of the clause was to use the 20 percent guideline for child support for two children. Stigler v. Stigler, 48 So. 3d 547 (Miss. Ct. App. 2009), writ of certiorari denied by 49 So. 3d 1139, 2010 Miss. LEXIS 619 (Miss. 2010).

2.5. Guidelines; adherence to.

Evidence relied on by the chancellor provided support for a child support award to a father as the record reflected the reasonableness of the chancellor's reliance upon testimony in the record, financial disclosures, and the mother's recent check stub in his calculations. The chancellor used the guidelines in Miss. Code Ann. § 43-19-101 (Rev. 2009). Robinson v. Brown, 58 So. 3d 38 (Miss. Ct. App. 2011).

Chancellor followed the guidelines of Miss. Code Ann. § 43-19-101 (Rev. 2009) when calculating a child support award, and the financial information relied on by the chancellor supported the award of child support. Robinson v. Brown, — So. 3d —, 2011 Miss. App. LEXIS 31 (Miss. Ct. App. Jan. 25, 2011), opinion withdrawn by, substituted opinion at, modified by 58 So. 3d 38, 2011 Miss. App. LEXIS 160 (Miss. Ct. App. 2011).

3. Guidelines; deviation from.

Chancellor erred in granting a father a downward modification of his child support payments, but setting the amount of payments greater than that required by the support guidelines, Miss. Code Ann. § 43-19-101(1) (Rev. 2009), because the chancellor's findings of fact were inadequate to support the reduction. Evans v. Evans, 75 So. 3d 1083 (Miss. Ct. App. 2011), writ of certiorari denied by 76 So.

3d 169, 2011 Miss. LEXIS 557 (Miss. 2011), writ of certiorari denied by 2011 Miss. LEXIS 572 (Miss. Dec. 1, 2011).

In a divorce matter, the chancellor erred in ordering the wife to pay an amount of child support in excess of the statutory child-support guidelines under Miss. Code Ann. § 43-19-101(1). While the chancellor may have based the award on the wife's earning capacity rather than her actual earnings, no such on-the-record findings were made. Wheat v. Wheat, 37 So. 3d 632 (Miss. 2010).

Chancellor erred when he deviated from the statutory child support guidelines set forth in Miss. Code Ann. § 43-19-101, which carry a rebuttable presumption of correctness, without providing a legally sufficient reason for doing so; estrangement was not a basis for deviation from statutory child-support guidelines and was not an excuse for failing to pay child support. Lowrey v. Lowrey, 25 So. 3d 274 (Miss. 2009).

For purposes of Miss. Code Ann. § 43-19-101(3)(d), the trial court did not subtract an amount from the adjusted gross income, but improperly used the guideline percentage for two children and divided it between the two children; the trial court did not follow the method provided in § 43-19-101(3)(d) and did not provide any written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in this case that would overcome the presumption that the guidelines were appropriate under Miss. Code Ann. § 43-19-103, and thus the court had to reverse and remand so that the child support award could be calculated in accordance with Miss. Code Ann. § 43-19-101, or alternatively the trial court had to justify its failure to do so. Grove v. Agnew, 14 So. 3d 790 (Miss. Ct. App. 2009).

Trial court's award represented approximately 10 percent of the father's adjusted gross income, while the statutory percentage of adjusted gross income for one child was 14 percent under Miss. Code Ann. § 43-19-101(1). Grove v. Agnew, 14 So. 3d 790 (Miss. Ct. App. 2009).

Record did not substantially support the chancellor's child support award in light of Miss. Code Ann. § 43-19-101(3)(a)-(b). The chancellor accepted the husband's asserted monthly self-employment income reflected on his tax documents as $ 1,880 without considering the potential commingling of the company's assets and expenses with personal assets and expenses, all of husband's income sources, and without considering the generally recognized test for determining self-employment income. Faerber v. Faerber, 13 So. 3d 853 (Miss. Ct. App. 2009).

Husband, as a skilled medical professional, had the ability to earn a substantial income, whereas at this time, the wife did not, and the chancellor considered the child's private school tuition and enhanced educational activities; the son's extracurricular activities and the lifestyle to which the family was accustomed met the criteria in Miss. Code Ann. § 43-19-103(f), and the chancellor found it reasonable to apply the fourteen percent statutory standard to the husband's adjusted gross monthly income. Smith v. Smith, 25 So. 3d 369 (Miss. Ct. App. 2009), writ of certiorari denied by 24 So. 3d 1038, 2010 Miss. LEXIS 17 (Miss. 2010).

4. Findings of fact.

Since a mother failed to raise to the chancellor her challenge to the reasonableness of the child-support guidelines, she was barred from challenging the chancellor's failure to make specific findings of fact on the reasonableness of the guidelines. Robinson v. Brown, 58 So. 3d 38 (Miss. Ct. App. 2011).

As the record indicated that a husband's income was much higher than claimed on the husband's financial disclosure statement, a determination of the husband's income and entry of a child support order in accordance with Miss. Code Ann. § 43-19-101 was required, in a divorce proceeding; for example, there was explanation in the record as to how a $ 127,520 depreciation deduction was utilized. Holdeman v. Holdeman, 34 So. 3d 650 (Miss. Ct. App. 2010).

The chancery court had the authority to modify the provisions of an agreement regarding child support in a divorce action, and absent any showing that the final written order did not reflect the agreement announced in court, or any identification of a matter cognizable under

Miss. R. Civ. P. 60 that could lead to setting aside a consent decree after being entered, the parties were bound by their agreement, notwithstanding fact that the chancellor did not make specific, written findings supporting the child support award pursuant to Miss. Code Ann. § 43-19-101(4). Woodfin v. Woodfin, 26 So. 3d 389 (Miss. Ct. App. 2010).

Chancellor did not abuse her discretion by basing her decision solely upon the father's trust income, and not including income from his farming operations, where the record showed there was contradictory evidence as to the net income or loss arising out of the farming operations, and that the chancellor examined such evidence thoroughly before making her ruling. Owen v. Owen, 22 So. 3d 386 (Miss. Ct. App. 2009).

Recalculation of a child support award was required because mandatory deductions under Miss. Code Ann. § 43-19-101(3)(b) for federal and state taxes and for social security and Medicare payments had not been deducted from the calculation of the husband's gross income. Holloway v. Holloway, 31 So. 3d 57 (Miss. Ct. App. 2009), writ of certiorari dismissed by 29 So. 3d 774, 2010 Miss. LEXIS 155 (Miss. 2010).

Because the father's adjusted gross income was greater than $ 50,000, the trial court was required to state on the record whether the guidelines were reasonable, for purposes of Miss. Code Ann. § 43-19-101(4). Grove v. Agnew, 14 So. 3d 790 (Miss. Ct. App. 2009).

6. Modification of support.

Although a former wife claimed a chancellor erred by failing to increase a former husband's child support obligation to an amount based upon 20 percent of the husband's income, in accordance with Miss. Code Ann. § 43-19-101, the chancellor did not abuse his discretion because the chancellor provided the required findings explaining his calculation of expenses and decision to deviate from the guidelines; the husband's income had increased from $ 37,000 to $ 240,000. Sturdavant v. Sturdavant, 53 So. 3d 838 (Miss. Ct. App. 2011).

Although the husband contended that the chancellor should have made specific, written findings supporting the child support award pursuant Miss. Code Ann. § 43-19-101(4) (Rev. 2009), the court found that the chancery court had the authority to modify the provisions of an agreement regarding child support in a divorce action, and absent any showing that the final written order did not reflect the agreement announced in court, or any identification of a matter cognizable under Miss. R. Civ. P. 60 that could lead to setting aside a consent decree after being entered, the parties were bound by their agreement. Therefore, because the parties agreed to the amount of child support in the agreement which was read in open court, and the chancellor merely recited the agreement and reduced the husband's contribution to the children's college expenses by half, the husband was bound to the provisions in the agreement that the chancellor approved. Woodfin v. Woodfin, 26 So. 3d 389 (Miss. Ct. App. 2010).

Upon finding that a 21-year-old son was emancipated, a father's duty to pay child support for the son ceased, and his child support obligation then became solely for his daughter. Therefore, the father was entitled to a support modification and a credit on his arrearage because he should have only been paying 14 percent of his adjusted gross income for one child, instead of 20 percent for two children. Andres v. Andres, 22 So. 3d 314 (Miss. Ct. App. 2009).

Because a mother had gained employment and when her employment stabilized, she could be required to make child support payments in compliance with Miss. Code Ann. § 43-19-101(a). Mercier v. Mercier, 11 So. 3d 1283 (Miss. Ct. App. 2009).

§ 43-19-103. Criteria for overcoming presumption that guidelines are appropriate.

The rebuttable presumption as to the justness or appropriateness of an award or modification of a child support award in this state, based upon the

guidelines established by Section 43-19-101, may be overcome by a judicial or administrative body awarding or modifying the child support award by making a written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in a particular case as determined according to the following criteria:

(a) Extraordinary medical, psychological, educational or dental expenses.

(b) Independent income of the child.

(c) The payment of both child support and spousal support to the obligee.

(d) Seasonal variations in one or both parents' incomes or expenses.

(e) The age of the child, taking into account the greater needs of older children.

(f) Special needs that have traditionally been met within the family budget even though the fulfilling of those needs will cause the support to exceed the proposed guidelines.

(g) The particular shared parental arrangement, such as where the noncustodial parent spends a great deal of time with the children thereby reducing the financial expenditures incurred by the custodial parent, or the refusal of the noncustodial parent to become involved in the activities of the child, or giving due consideration to the custodial parent's homemaking services.

(h) Total available assets of the obligee, obligor and the child.

(i) Payment by the obligee of child care expenses in order that the obligee may seek or retain employment, or because of the disability of the obligee.

(j) Any other adjustment which is needed to achieve an equitable result which may include, but not be limited to, a reasonable and necessary existing expense or debt.

SOURCES: Laws, 1989, ch. 439, § 2; Laws, 2012, ch. 552, § 3, eff from and after passage (approved May 22, 2012.)

Amendment Notes — The 2012 amendment added (i) and redesignated former (i) as (j).

JUDICIAL DECISIONS

1. In general.
3. Education expenses.

1. In general.

Low income is not among the statutory criteria in Miss. Code Ann. § 43-19-103 for overcoming the presumption in favor of the child-support guidelines. Lowrey v. Lowrey, 25 So. 3d 274 (Miss. 2009).

For purposes of Miss. Code Ann. § 43-19-101(3)(d), the trial court did not subtract an amount from the adjusted gross income, but improperly used the guideline percentage for two children and divided it between the two children; the trial court did not follow the method provided in § 43-19-101(3)(d) and did not provide any written finding or specific finding on the record that the application of the guidelines would be unjust or inappropriate in this case that would overcome the presumption that the guidelines were appro-

priate under Miss. Code Ann. § 43-19-103, and thus the court had to reverse and remand so that the child support award could be calculated in accordance with Miss. Code Ann. § 43-19-101, or alternatively the trial court had to justify its failure to do so. Grove v. Agnew, 14 So. 3d 790 (Miss. Ct. App. 2009).

3. Education expenses.

Husband, as a skilled medical professional, had the ability to earn a substantial income, whereas at this time, the wife did not, and the chancellor considered the child's private school tuition and enhanced educational activities; the son's extracurricular activities and the lifestyle to which the family was accustomed met the criteria in Miss. Code Ann. § 43-19-103(f), and the chancellor found it reasonable to apply the fourteen percent statutory standard to the husband's adjusted gross monthly income. Smith v. Smith, 25 So. 3d 369 (Miss. Ct. App. 2009), writ of certiorari denied by 24 So. 3d 1038, 2010 Miss. LEXIS 17 (Miss. 2010).

CHAPTER 20

Child Care Facilities

MISSISSIPPI CHILD CARE LICENSING LAW

§ 43-20-17. Information confidential; authority to release findings of investigations into allegations of abuse.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the last sentence by substituting "Section 43-21-353(8) or Section 43-21-257" for "Sections 43-21-353(8) and Section 43-21-257." The Joint Committee ratified the correction at its July 22, 2010, meeting. Since the language of the section as it appears in the main volume is correct, it is not set out in the supplement.

§ 43-20-21. Injunctive relief.

Notwithstanding the existence of any other remedy, the licensing agency may, in the manner provided by law, in termtime or in vacation, upon the advice of the Attorney General who, except as otherwise authorized in Section 7-5-39, shall represent the licensing agency in the proceedings, maintain an action in the name of the state for an injunction or other proper remedy against any person to restrain or prevent the establishment, conduct, management or operation of a child care facility without license under this chapter, or otherwise in violation of this chapter.

SOURCES: Codes, 1942, § 7129-140; Laws, 1972, ch. 528, § 10; brought forward, Laws, 1990, ch. 552, § 14; Laws, 2012, ch. 546, § 19, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment inserted "except as otherwise authorized in Section 7-5-39" near the middle.

INFORMATION TO BE PROVIDED TO CHILD'S PARENTS OR LEGAL GUARDIANS BY CHILD CARE FACILITIES

§ 43-20-81. Information relative to risks associated with influenza and availability, effectiveness and modes of administration of influenza vaccines.

(1) Each licensed child care facility shall, by October 1 of every year, provide each child's parent or legal guardian with information relative to the risks associated with influenza and the availability, effectiveness and modes of administration of influenza vaccines. That information shall be updated annually to include new information and shall include the following:

(a) The causes and symptoms of influenza and means by which influenza is transmitted;

(b) The infection rates of influenza in children;

(c) Information about the U.S. Centers for Disease Control and Prevention's (CDC) recommendations for routine, seasonal vaccination of all children aged six (6) months through eighteen (18) years; and

(d) Sources in which a parent or legal guardian may obtain additional information and where a child may be immunized against influenza.

(2) The State Department of Health shall develop information on influenza immunization and provide that information to each licensed child care facility, which shall provide the information to each child's parent or legal guardian as required by subsection (1) of this section.

(3) The department shall determine the most cost-effective and efficient means of distributing the information. The department may work with public health organizations and vaccine stakeholders in developing and distributing the information.

(4) Nothing in this section shall be construed to require any licensed child care facility to provide or pay for immunizations against influenza. However, if a licensed child care facility requests assistance in providing influenza vaccine on site to children in accordance with their parent or legal guardian's approval, the department shall work with the licensed child care facility to provide advice and influenza vaccine for children who qualify for the vaccine through the federal Vaccines for Children (VFC) program.

(5) The State Board of Health shall establish by rules and regulations all guidelines and procedures for carrying out the provisions of this section.

SOURCES: Laws, 2010, ch. 342, § 1, eff from and after July 1, 2010.

Federal Aspects — Vaccines for Children (VFC) program, see 42 USCS 1396s.

CHAPTER 21

Youth Court

ORGANIZATION, ADMINISTRATION AND OPERATION

§ 43-21-103. Construction and purpose.

JUDICIAL DECISIONS

I. Under Current Law.

4. Miscellaneous.

In a case in which a mother appealed a youth court's adjudication that she had neglected her two minor children and had placed the children in the legal custody of the Department of Human Services (DHS), the facts supported the youth court's finding that, at minimum, the children were not being provided the proper and necessary care or support or other care necessary for their well-being. The youth court was presented with conflicting testimony about the mother's care and support for her children, and based on the mother's alarming actions and statements that she would turn the children over to DHS, it could not be concluded with confidence that the youth court judge's decision was manifestly wrong. S. v. State, 47 So. 3d 715 (Miss. Ct. App. 2010), writ of certiorari denied en banc by 49 So. 3d 1139, 2010 Miss. LEXIS 606 (Miss. 2010).

§ 43-21-105. Definitions.

The following words and phrases, for purposes of this chapter, shall have the meanings ascribed herein unless the context clearly otherwise requires:

(a) "Youth court" means the Youth Court Division.

(b) "Judge" means the judge of the Youth Court Division.

(c) "Designee" means any person that the judge appoints to perform a duty which this chapter requires to be done by the judge or his designee. The judge may not appoint a person who is involved in law enforcement to be his designee.

(d) "Child" and "youth" are synonymous, and each means a person who has not reached his eighteenth birthday. A child who has not reached his eighteenth birthday and is on active duty for a branch of the armed services or is married is not considered a "child" or "youth" for the purposes of this chapter.

(e) "Parent" means the father or mother to whom the child has been born, or the father or mother by whom the child has been legally adopted.

(f) "Guardian" means a court-appointed guardian of the person of a child.

(g) "Custodian" means any person having the present care or custody of a child whether such person be a parent or otherwise.

(h) "Legal custodian" means a court-appointed custodian of the child.

(i) "Delinquent child" means a child who has reached his tenth birthday and who has committed a delinquent act.

(j) "Delinquent act" is any act, which if committed by an adult, is designated as a crime under state or federal law, or municipal or county ordinance other than offenses punishable by life imprisonment or death. A delinquent act includes escape from lawful detention and violations of the Uniform Controlled Substances Law and violent behavior.

(k) "Child in need of supervision" means a child who has reached his seventh birthday and is in need of treatment or rehabilitation because the child:

(i) Is habitually disobedient of reasonable and lawful commands of his parent, guardian or custodian and is ungovernable; or

(ii) While being required to attend school, willfully and habitually violates the rules thereof or willfully and habitually absents himself therefrom; or

(iii) Runs away from home without good cause; or

(iv) Has committed a delinquent act or acts.

(*l*) "Neglected child" means a child:

(i) Whose parent, guardian or custodian or any person responsible for his care or support, neglects or refuses, when able so to do, to provide for him proper and necessary care or support, or education as required by law, or medical, surgical, or other care necessary for his well-being; however, a parent who withholds medical treatment from any child who in good faith is under treatment by spiritual means alone through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall not, for that reason alone, be considered to be neglectful under any provision of this chapter; or

(ii) Who is otherwise without proper care, custody, supervision or support; or

(iii) Who, for any reason, lacks the special care made necessary for him by reason of his mental condition, whether the mental condition is having mental illness or having an intellectual disability; or

(iv) Who, for any reason, lacks the care necessary for his health, morals or well-being.

(m) "Abused child" means a child whose parent, guardian or custodian or any person responsible for his care or support, whether legally obligated to do so or not, has caused or allowed to be caused upon the child sexual abuse, sexual exploitation, emotional abuse, mental injury, nonaccidental

physical injury or other maltreatment. However, physical discipline, including spanking, performed on a child by a parent, guardian or custodian in a reasonable manner shall not be deemed abuse under this section.

(n) "Sexual abuse" means obscene or pornographic photographing, filming or depiction of children for commercial purposes, or the rape, molestation, incest, prostitution or other such forms of sexual exploitation of children under circumstances which indicate that the child's health or welfare is harmed or threatened.

(o) "A child in need of special care" means a child with any mental or physical illness that cannot be treated with the dispositional alternatives ordinarily available to the youth court.

(p) A "dependent child" means any child who is not a child in need of supervision, a delinquent child, an abused child or a neglected child, and which child has been voluntarily placed in the custody of the Department of Human Services by his parent, guardian or custodian.

(q) "Custody" means the physical possession of the child by any person.

(r) "Legal custody" means the legal status created by a court order which gives the legal custodian the responsibilities of physical possession of the child and the duty to provide him with food, shelter, education and reasonable medical care, all subject to residual rights and responsibilities of the parent or guardian of the person.

(s) "Detention" means the care of children in physically restrictive facilities.

(t) "Shelter" means care of children in physically nonrestrictive facilities.

(u) "Records involving children" means any of the following from which the child can be identified:

(i) All youth court records as defined in Section 43-21-251;

(ii) All social records as defined in Section 43-21-253;

(iii) All law enforcement records as defined in Section 43-21-255;

(iv) All agency records as defined in Section 43-21-257; and

(v) All other documents maintained by any representative of the state, county, municipality or other public agency insofar as they relate to the apprehension, custody, adjudication or disposition of a child who is the subject of a youth court cause.

(v) "Any person responsible for care or support" means the person who is providing for the child at a given time. This term shall include, but is not limited to, stepparents, foster parents, relatives, nonlicensed baby-sitters or other similar persons responsible for a child and staff of residential care facilities and group homes that are licensed by the Department of Human Services.

(w) The singular includes the plural, the plural the singular and the masculine the feminine when consistent with the intent of this chapter.

(x) "Out-of-home" setting means the temporary supervision or care of children by the staff of licensed day care centers, the staff of public, private and state schools, the staff of juvenile detention facilities, the staff of

unlicensed residential care facilities and group homes and the staff of, or individuals representing, churches, civic or social organizations.

(y) "Durable legal custody" means the legal status created by a court order which gives the durable legal custodian the responsibilities of physical possession of the child and the duty to provide him with care, nurture, welfare, food, shelter, education and reasonable medical care. All these duties as enumerated are subject to the residual rights and responsibilities of the natural parent(s) or guardian(s) of the child or children.

(z) "Status offense" means conduct subject to adjudication by the youth court that would not be a crime if committed by an adult.

SOURCES: Laws, 1979, ch. 506, § 3; Laws, 1980, ch. 550, § 2; Laws, 1985, ch. 486, § 2; Laws, 1986, ch. 416, § 1; Laws, 1991, ch. 537, § 1; Laws, 1991, ch. 539, § 7; Laws, 1993, ch. 560, § 1; Laws, 1994, ch. 591, § 5; Laws, 1994, ch. 607, § 17; Laws, 1996, ch. 323, § 1; Laws, 1998, ch. 516, § 6; Laws, 2001, ch. 358, § 1; Laws, 2005, ch. 471, § 4; Laws, 2010, ch. 476, § 73, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment rewrote (*l*)(iii) and (m).

§ 43-21-121. Guardian ad litem.

JUDICIAL DECISIONS

1. In general.

In a child custody case, a guardian ad litem (GAL) did not exceed the proper role of a GAL by offering testimony, providing a written report to the court, making recommendations, discussing the views of the court-appointed counselor, filing a motion, examining witnesses, and meeting ex-parte with the chancellor, where the GAL reported on matters required by the GAL's appointment, and consistent with a GAL's duties and where the chancellor did not allow the GAL to usurp the chancellor's role as the ultimate finder of fact. McDonald v. McDonald, 39 So. 3d 868 (Miss. 2010).

In an action to modify child custody, where guardian ad litem failed to provide the court with an objective record of the evidence or make a recommendation as to whether or not a material change in circumstances had occurred; did not prepare a written report or recommendation; declined to question any witnesses during the trial; and declined to add any statements to the record other than a statement that she would leave it to the court's discretion as to whether or not there had been a material change in circumstances; she failed to comply with her statutory duties, and the case was properly remanded for the chancellor to reconsider based on the totality of the circumstances. Gainey v. Edington, 24 So. 3d 333 (Miss. Ct. App. 2009).

JURISDICTION

SEC.

§ 43-21-151. Jurisdiction.

(1) The youth court shall have exclusive original jurisdiction in all proceedings concerning a delinquent child, a child in need of supervision, a neglected child, an abused child or a dependent child except in the following circumstances:

(a) Any act attempted or committed by a child, which if committed by an adult would be punishable under state or federal law by life imprisonment or death, will be in the original jurisdiction of the circuit court;

(b) Any act attempted or committed by a child with the use of a deadly weapon, the carrying of which concealed is prohibited by Section 97-37-1, or a shotgun or a rifle, which would be a felony if committed by an adult, will be in the original jurisdiction of the circuit court; and

(c) When a charge of abuse of a child first arises in the course of a custody action between the parents of the child already pending in the chancery court and no notice of such abuse was provided prior to such chancery proceedings, the chancery court may proceed with the investigation, hearing and determination of such abuse charge as a part of its hearing and determination of the custody issue as between the parents, notwithstanding the other provisions of the Youth Court Law. The proceedings in chancery court on the abuse charge shall be confidential in the same manner as provided in youth court proceedings.

When a child is expelled from the public schools, the youth court shall be notified of the act of expulsion and the act or acts constituting the basis for expulsion.

(2) Jurisdiction of the child in the cause shall attach at the time of the offense and shall continue thereafter for that offense until the child's twentieth birthday, unless sooner terminated by order of the youth court. The youth court shall not have jurisdiction over offenses committed by a child on or after his eighteenth birthday.

(3) No child who has not reached his thirteenth birthday shall be held criminally responsible or criminally prosecuted for a misdemeanor or felony; however, the parent, guardian or custodian of such child may be civilly liable for any criminal acts of such child. No child under the jurisdiction of the youth court shall be held criminally responsible or criminally prosecuted by any court for any act designated as a delinquent act, unless jurisdiction is transferred to another court under Section 43-21-157.

(4) The youth court shall also have jurisdiction of offenses committed by a child which have been transferred to the youth court by an order of a circuit court of this state having original jurisdiction of the offense, as provided by Section 43-21-159.

(5) The youth court shall regulate and approve the use of teen court as provided in Section 43-21-753.

(6) Nothing in this section shall prevent the circuit court from assuming jurisdiction over a youth who has committed an act of delinquency upon a youth court's ruling that a transfer is appropriate pursuant to Section 43-21-157.

SOURCES: Laws, 1979, ch. 506, § 15; Laws, 1985, ch. 486, § 1; Laws, 1989, ch. 441, § 3; Laws, 1990, ch. 452, § 1; Laws, 1993, ch. 558, § 1; Laws, 1994, ch. 595, § 1; Laws, 1996, ch. 514, § 3; Laws, 2010, ch. 542, § 1, eff from and after July 1, 2011.

Amendment Notes — The 2010 amendment, effective July 1, 2011, deleted "or over offenses committed by a child on or after his seventeenth birthday where such offenses would be a felony if committed by an adult" from the end of (2); and added (6).

JUDICIAL DECISIONS

I. Under Current Law.

3. Construction and application.
4. Original jurisdiction.

I. Under Current Law.

3. Construction and application.

Because defendant was 17 years old at the time the alleged felony offense of accessory after the fact to murder was committed, jurisdiction was proper in the circuit court pursuant to Miss. Code Ann. § 43-21-151 (Rev. 2004). Moreover, although defendant argued that the statements he made to the police were inadmissible because the police failed to take his statements in compliance with the requirements of the Youth Court Act, Miss. Code Ann. § 43-21-303(3) (Rev. 2004), the youth court did not have jurisdiction over defendant's case, and since the Youth Court Act did not apply, parental notification was unnecessary. Miller v. State, 18 So. 3d 898 (Miss. Ct. App. 2009).

4. Original jurisdiction.

Although defendant argued the circuit court erred in instructing potential jurors regarding the fact that defendant was 14 years old at the time he was accused of murder, because the circuit court had original jurisdiction pursuant to Miss. Code Ann. § 43-21-151(1)(a), the circuit court correctly informed the jurors that defendant could be tried as an adult. Evans v. State, — So. 2d —, 2011 Miss. App. LEXIS 343 (Miss. Ct. App. June 14, 2011).

In an ongoing child custody case, the chancellor did not err in exercising jurisdiction under Miss. Code Ann. § 43-21-151(1)(c) when subsequent child-abuse allegations were made and investigated because the chancery court possessed original and continuing jurisdiction, and the youth court in the other county failed to comply with the statutory process. McDonald v. McDonald, 39 So. 3d 868 (Miss. 2010).

§ 43-21-159. Transfer of cases from other courts.

(1) When a person appears before a court other than the youth court, and it is determined that the person is a child under jurisdiction of the youth court, such court shall, unless the jurisdiction of the offense has been transferred to such court as provided in this chapter, or unless the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult and was convicted, immediately dismiss the proceeding without prejudice and forward all documents pertaining to the cause to the youth court; and all entries in permanent records shall be expunged. The youth court shall have the power to order and supervise the expunction or the destruction of such records in accordance with Section 43-21-265. Upon petition therefor, the youth court shall expunge the record of any case within its jurisdiction in which an arrest was made, the person arrested was released and the case was dismissed or the charges were dropped or there was no disposition of such case.

In cases where the child is charged with a hunting or fishing violation or a traffic violation, whether it be any state or federal law, a violation of the Mississippi Implied Consent Law, or municipal ordinance or county resolution, or where the child is charged with a violation of Section 67-3-70, the appropriate criminal court shall proceed to dispose of the same in the same manner as for other adult offenders and it shall not be necessary to transfer the case to the youth court of the county. However, unless the cause has been transferred, or unless the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult and was convicted, the youth court shall have power on its own motion to remove jurisdiction from any criminal court of any offense including a hunting or fishing violation, a traffic violation, a violation of the Mississippi Implied Consent Law, or a violation of Section 67-3-70, committed by a child in a matter under the jurisdiction of the youth court and proceed therewith in accordance with the provisions of this chapter.

(2) After conviction and sentence of any child by any other court having original jurisdiction on a misdemeanor charge, and within the time allowed for an appeal of such conviction and sentence, the youth court of the county shall have the full power to stay the execution of the sentence and to release the child on good behavior or on other order as the youth court may see fit to make unless the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult and was convicted. When a child is convicted of a misdemeanor and is committed to, incarcerated in or imprisoned in a jail or other place of detention by a criminal court having proper jurisdiction of such charge, such court shall notify the youth court judge or the judge's designee of the conviction and sentence prior to the commencement of such incarceration. The youth court shall have the power to order and supervise the destruction of any records involving children maintained by the criminal court in accordance with Section 43-21-265. However, the youth court shall have the power to set aside a judgment of any other court rendered in any matter over which the youth court has exclusive original jurisdiction, to expunge or destroy the records thereof in accordance with Section 43-21-265, and to order a refund of fines and costs.

(3) Nothing in subsection (1) or (2) shall apply to a youth who has a pending charge or a conviction for any crime over which circuit court has original jurisdiction.

(4) In any case wherein the defendant is a child as defined in this chapter and of which the circuit court has original jurisdiction, the circuit judge, upon a finding that it would be in the best interest of such child and in the interest of justice, may at any stage of the proceedings prior to the attachment of jeopardy transfer such proceedings to the youth court for further proceedings unless the child has previously been the subject of a transfer from the youth court to the circuit court for trial as an adult and was convicted or has previously been convicted of a crime which was in original circuit court jurisdiction, and the youth court shall, upon acquiring jurisdiction, proceed as provided in this chapter for the adjudication and disposition of delinquent child

proceeding proceedings. If the case is not transferred to the youth court and the youth is convicted of a crime by any circuit court, the trial judge shall sentence the youth as though such youth was an adult. The circuit court shall not have the authority to commit such child to the custody of the Department of Youth Services for placement in a state-supported training school.

(5) In no event shall a court sentence an offender over the age of eighteen (18) to the custody of the Division of Youth Services for placement in a state-supported training school.

(6) When a child's driver's license is suspended by the youth court for any reason, the clerk of the youth court shall report the suspension, without a court order under Section 43-21-261, to the Commissioner of Public Safety in the same manner as such suspensions are reported in cases involving adults.

(7) No offense involving the use or possession of a firearm by a child who has reached his fifteenth birthday and which, if committed by an adult would be a felony, shall be transferred to the youth court.

SOURCES: Laws, 1979, ch. 506, § 19; Laws, 1980, ch. 550, § 7; Laws, 1983, ch. 435, § 9; Laws, 1985, ch. 431, § 5; Laws, 1986, ch. 467, § 2; Laws, 1994, ch. 595, § 3; Laws, 1996, ch. 454, § 2; Laws, 1996, ch. 527, § 17; Laws, 2003, ch. 557, § 1; Laws, 2012, ch. 564, § 1, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment in the second sentence of the second paragraph in (1), inserted "However" at the beginning and deleted "except for violations under the Mississippi Implied Consent Law" following "trial as an adult"; added "a violation of the Mississippi Implied Consent Law" following "a traffic violation" in the last sentence of the last paragraph of (1); and made minor stylistic changes.

RECORDS

SEC.
43-21-261. Disclosure of records.

§ 43-21-261. Disclosure of records.

(1) Except as otherwise provided in this section, records involving children shall not be disclosed, other than to necessary staff of the youth court, except pursuant to an order of the youth court specifying the person or persons to whom the records may be disclosed, the extent of the records which may be disclosed and the purpose of the disclosure. Such court orders for disclosure shall be limited to those instances in which the youth court concludes, in its discretion, that disclosure is required for the best interests of the child, the public safety or the functioning of the youth court and then only to the following persons:

(a) The judge of another youth court or member of another youth court staff;

(b) The court of the parties in a child custody or adoption cause in another court;

(c) A judge of any other court or members of another court staff;

(d) Representatives of a public or private agency providing supervision or having custody of the child under order of the youth court;

(e) Any person engaged in a bona fide research purpose, provided that no information identifying the subject of the records shall be made available to the researcher unless it is absolutely essential to the research purpose and the judge gives prior written approval, and the child, through his or her representative, gives permission to release the information;

(f) The Mississippi Department of Employment Security, or its duly authorized representatives, for the purpose of a child's enrollment into the Job Corps Training Program as authorized by Title IV of the Comprehensive Employment Training Act of 1973 (29 USCS Section 923 et seq.). However, no records, reports, investigations or information derived therefrom pertaining to child abuse or neglect shall be disclosed; and

(g) To any person pursuant to a finding by a judge of the youth court of compelling circumstances affecting the health or safety of a child and that such disclosure is in the best interests of the child.

Law enforcement agencies may disclose information to the public concerning the taking of a child into custody for the commission of a delinquent act without the necessity of an order from the youth court. The information released shall not identify the child or his address unless the information involves a child convicted as an adult.

(2) Any records involving children which are disclosed under an order of the youth court or pursuant to the terms of this section and the contents thereof shall be kept confidential by the person or agency to whom the record is disclosed unless otherwise provided in the order. Any further disclosure of any records involving children shall be made only under an order of the youth court as provided in this section.

(3) Upon request, the parent, guardian or custodian of the child who is the subject of a youth court cause or any attorney for such parent, guardian or custodian, shall have the right to inspect any record, report or investigation which is to be considered by the youth court at a hearing, except that the identity of the reporter shall not be released, nor the name of any other person where the person or agency making the information available finds that disclosure of the information would be likely to endanger the life or safety of such person.

(4) Upon request, the child who is the subject of a youth court cause shall have the right to have his counsel inspect and copy any record, report or investigation which is filed with the youth court or which is to be considered by the youth court at a hearing.

(5)(a) The youth court prosecutor or prosecutors, the county attorney, the district attorney, the youth court defender or defenders, or any attorney representing a child shall have the right to inspect and copy any law enforcement record involving children.

(b) The Department of Human Services shall disclose to a county prosecuting attorney or district attorney any and all records resulting from an investigation into suspected child abuse or neglect when the case has

been referred by the Department of Human Services to the county prosecuting attorney or district attorney for criminal prosecution.

(c) Agency records made confidential under the provisions of this section may be disclosed to a court of competent jurisdiction.

(d) Records involving children shall be disclosed to the Division of Victim Compensation of the Office of the Attorney General upon the division's request without order of the youth court for purposes of determination of eligibility for victim compensation benefits.

(6) Information concerning an investigation into a report of child abuse or child neglect may be disclosed by the Department of Human Services without order of the youth court to any attorney, physician, dentist, intern, resident, nurse, psychologist, social worker, family protection worker, family protection specialist, child caregiver, minister, law enforcement officer, public or private school employee making that report pursuant to Section 43-21-353(1) if the reporter has a continuing professional relationship with the child and a need for such information in order to protect or treat the child.

(7) Information concerning an investigation into a report of child abuse or child neglect may be disclosed without further order of the youth court to any interagency child abuse task force established in any county or municipality by order of the youth court of that county or municipality.

(8) Names and addresses of juveniles twice adjudicated as delinquent for an act which would be a felony if committed by an adult or for the unlawful possession of a firearm shall not be held confidential and shall be made available to the public.

(9) Names and addresses of juveniles adjudicated as delinquent for murder, manslaughter, burglary, arson, armed robbery, aggravated assault, any sex offense as defined in Section 45-33-23, for any violation of Section 41-29-139(a)(1) or for any violation of Section 63-11-30, shall not be held confidential and shall be made available to the public.

(10) The judges of the circuit and county courts, and presentence investigators for the circuit courts, as provided in Section 47-7-9, shall have the right to inspect any youth court records of a person convicted of a crime for sentencing purposes only.

(11) The victim of an offense committed by a child who is the subject of a youth court cause shall have the right to be informed of the child's disposition by the youth court.

(12) A classification hearing officer of the State Department of Corrections, as provided in Section 47-5-103, shall have the right to inspect any youth court records, excluding abuse and neglect records, of any offender in the custody of the department who as a child or minor was a juvenile offender or was the subject of a youth court cause of action, and the State Parole Board, as provided in Section 47-7-17, shall have the right to inspect such records when the offender becomes eligible for parole.

(13) The youth court shall notify the Department of Public Safety of the name, and any other identifying information such department may require, of any child who is adjudicated delinquent as a result of a violation of the Uniform Controlled Substances Law.

(14) The Administrative Office of Courts shall have the right to inspect any youth court records in order that the number of youthful offenders, abused, neglected, truant and dependent children, as well as children in need of special care and children in need of supervision, may be tracked with specificity through the youth court and adult justice system, and to utilize tracking forms for such purpose.

(15) Upon a request by a youth court, the Administrative Office of Courts shall disclose all information at its disposal concerning any previous youth court intakes alleging that a child was a delinquent child, child in need of supervision, child in need of special care, truant child, abused child or neglected child, as well as any previous youth court adjudications for the same and all dispositional information concerning a child who at the time of such request comes under the jurisdiction of the youth court making such request.

(16) The Administrative Office of Courts may, in its discretion, disclose to the Department of Public Safety any or all of the information involving children contained in the office's youth court data management system known as Mississippi Youth Court Information Delivery System or "MYCIDS."

(17) In every case where an abuse or neglect allegation has been made, the confidentiality provisions of this section shall not apply to prohibit access to a child's records by any state regulatory agency, any state or local prosecutorial agency or law enforcement agency; however, no identifying information concerning the child in question may be released to the public by such agency except as otherwise provided herein.

(18) In every case where there is any indication or suggestion of either abuse or neglect and a child's physical condition is medically labeled as medically "serious" or "critical" or a child dies, the confidentiality provisions of this section shall not apply. In cases of child deaths, the following information may be released by the Mississippi Department of Human Services: (a) child's name; (b) address or location; (c) verification from the Department of Human Services of case status (no case or involvement, case exists, open or active case, case closed); (d) if a case exists, the type of report or case (physical abuse, neglect, etc.), date of intake(s) and investigation(s), and case disposition (substantiated or unsubstantiated). Notwithstanding the aforesaid, the confidentiality provisions of this section shall continue if there is a pending or planned investigation by any local, state or federal governmental agency or institution.

(19) Any member of a foster care review board designated by the Department of Human Services shall have the right to inspect youth court records relating to the abuse, neglect or child in need of supervision cases assigned to such member for review.

(20) Information concerning an investigation into a report of child abuse or child neglect may be disclosed without further order of the youth court in any administrative or due process hearing held, pursuant to Section 43-21-257, by the Department of Human Services for individuals whose names will be placed on the central registry as substantiated perpetrators.

SOURCES: Laws, 1979, ch. 506, § 28; Laws, 1980, ch. 550, § 4; Laws, 1986, ch. 422, § 1; Laws, 1988, ch. 459; Laws, 1989, ch. 433, § 1; Laws, 1991, ch. 468 § 6; Laws, 1994, ch. 591, § 2; Laws, 1994, ch. 595, § 5; Laws, 1995, ch. 547, § 3; Laws, 1997, ch. 440, § 8; Laws, 1998, ch. 447, § 1; Laws, 1998, ch. 516, § 19; Laws, 2000, ch. 436, § 2; Laws, 2000, ch. 499, § 23; Laws, 2001, ch. 360, § 1; Laws, 2001, ch. 393, § 12; Laws, 2004, ch. 489, § 2; Laws, 2006, ch. 600, § 3; Laws, 2007, ch. 478, § 1; Laws, 2007, ch. 587, § 11; Laws, 2010, ch. 349, § 1, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment added (16), and redesignated remaining subsections accordingly.

CUSTODY AND DETENTION

SEC.

§ 43-21-301. Custody orders.

(1) No court other than the youth court shall issue an arrest warrant or custody order for a child in a matter in which the youth court has exclusive original jurisdiction but shall refer the matter to the youth court.

(2) Except as otherwise provided, no child in a matter in which the youth court has exclusive original jurisdiction shall be taken into custody by a law enforcement officer, the Department of Human Services, or any other person unless the judge or his designee has issued a custody order to take the child into custody.

(3) The judge or his designee may require a law enforcement officer, the Department of Human Services, or any suitable person to take a child into custody for a period not longer than forty-eight (48) hours, excluding Saturdays, Sundays, and statutory state holidays.

(a) Custody orders under this subsection may be issued if it appears that there is probable cause to believe that:

(i) The child is within the jurisdiction of the court;

(ii) Custody is necessary because of any of the following reasons: the child is endangered, any person would be endangered by the child, to ensure the child's attendance in court at such time as required, or a parent, guardian or custodian is not available to provide for the care and supervision of the child; and

(iii) There is no reasonable alternative to custody.

(b) Custody orders under this subsection shall be written. In emergency cases, a judge or his designee may issue an oral custody order, but the order shall be reduced to writing within forty-eight (48) hours of its issuance.

(c) Each youth court judge shall develop and make available to law enforcement a list of designees who are available after hours, on weekends and on holidays.

(4) The judge or his designee may order, orally or in writing, the immediate release of any child in the custody of any person or agency. Except as otherwise provided in subsection (3) of this section, custody orders as provided by this chapter and authorizations of temporary custody may be written or oral, but, if oral, reduced to writing as soon as practicable. The written order shall:

(a) Specify the name and address of the child, or, if unknown, designate him or her by any name or description by which he or she can be identified with reasonable certainty;

(b) Specify the age of the child, or, if unknown, that he or she is believed to be of an age subject to the jurisdiction of the youth court;

(c) Except in cases where the child is alleged to be a delinquent child or a child in need of supervision, state that the effect of the continuation of the child's residing within his or her own home would be contrary to the welfare of the child, that the placement of the child in foster care is in the best interests of the child, and unless the reasonable efforts requirement is bypassed under Section 43-21-603(7)(c), also state that (i) reasonable efforts have been made to maintain the child within his or her own home, but that the circumstances warrant his removal and there is no reasonable alternative to custody; or (ii) the circumstances are of such an emergency nature that no reasonable efforts have been made to maintain the child within his own home, and that there is no reasonable alternative to custody. If the court makes a finding in accordance with (ii) of this paragraph, the court shall order that reasonable efforts be made towards the reunification of the child with his or her family.

(d) State that the child shall be brought immediately before the youth court or be taken to a place designated by the order to be held pending review of the order;

(e) State the date issued and the youth court by which the order is issued; and

(f) Be signed by the judge or his designee with the title of his office.

(5) The taking of a child into custody shall not be considered an arrest except for evidentiary purposes.

(6)(a) No child who has been accused or adjudicated of any offense that would not be a crime if committed by an adult shall be placed in an adult jail or lockup. An accused status offender shall not be held in secure detention longer than twenty-four (24) hours prior to and twenty-four (24) hours after an initial court appearance, excluding Saturdays, Sundays and statutory state holidays, except under the following circumstances: a status offender may be held in secure detention for violating a valid court order pursuant to the criteria as established by the federal Juvenile Justice and Delinquency Prevention Act of 2002, and any subsequent amendments thereto, and out-of-state runaways may be detained pending return to their home state.

(b) No accused or adjudicated juvenile offender, except for an accused or adjudicated juvenile offender in cases where jurisdiction is waived to the adult criminal court, shall be detained or placed into custody of any adult jail or lockup for a period in excess of six (6) hours.

(c) If any county violates the provisions of paragraph (a) or (b) of this subsection, the state agency authorized to allocate federal funds received pursuant to the Juvenile Justice and Delinquency Prevention Act of 1974, 88 Stat. 2750 (codified in scattered Sections of 5, 18, 42 USCS), shall withhold the county's share of such funds.

(d) Any county that does not have a facility in which to detain its juvenile offenders in compliance with the provisions of paragraphs (a) and (b) of this subsection may enter into a contractual agreement to detain or place into custody the juvenile offenders of that county with any county or municipality that does have such a facility, or with the State of Mississippi, or with any private entity that maintains a juvenile correctional facility.

(e) Notwithstanding the provisions of paragraphs (a), (b), (c) and (d) of this subsection, all counties shall be allowed a one-year grace period from March 27, 1993, to comply with the provisions of this subsection.

SOURCES: Laws, 1979, ch. 506, § 32; Laws, 1985, ch. 486, § 4; Laws, 1993, ch. 439, § 1; Laws, 2004, ch. 417, § 1; Laws, 2006, ch. 539, § 2; Laws, 2012, ch. 564, § 2, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment rewrote (3); added "Except as otherwise provided in subsection (3) of this section" at the beginning of the second sentence in (4); and rewrote (6)(d).

§ 43-21-303. Taking into custody without a custody order.

JUDICIAL DECISIONS

I. Under Current Law.

2. Particular applications.
3. Interrogation of child.

I. Under Current Law.

2. Particular applications.

Because defendant was 17 years old at the time the alleged felony offense of accessory after the fact to murder was committed, jurisdiction was proper in the circuit court pursuant to Miss. Code Ann. § 43-21-151 (Rev. 2004). Moreover, although defendant argued that the statements he made to the police were inadmissible because the police failed to take his statements in compliance with the requirements of the Youth Court Act, Miss. Code Ann. § 43-21-303(3) (Rev. 2004), the youth court did not have jurisdiction over defendant's case, and since the Youth Court Act did not apply, parental notification was unnecessary. Miller v. State, 18 So. 3d 898 (Miss. Ct. App. 2009).

3. Interrogation of child.

Although defendant was 14 years old when interviewed by the police without the presence of a parent, an attorney, or other friendly adult, defendant's statement was admissible because defendant was accused of murder and, as such, he was no longer afforded the protections of the Youth Court Act, Miss. Code Ann. § 43-21-303. Evans v. State, — So. 2d —, 2011 Miss. App. LEXIS 343 (Miss. Ct. App. June 14, 2011).

§ 43-21-321. Health screening required upon admission to juvenile detention center; development of written procedures for admission; adherence to certain minimum juvenile detention standards; provision of educational services to detained students; other programs and services.

(1) All juveniles shall undergo a health screening within one (1) hour of admission to any juvenile detention center, or as soon thereafter as reasonably possible. Information obtained during the screening shall include, but shall not be limited to, the juvenile's:

(a) Mental health;
(b) Suicide risk;
(c) Alcohol and other drug use and abuse;
(d) Physical health;
(e) Aggressive behavior;
(f) Family relations;
(g) Peer relations;
(h) Social skills;
(i) Educational status; and
(j) Vocational status.

(2) If the screening instrument indicates that a juvenile is in need of emergency medical care or mental health intervention services, the detention staff shall refer those juveniles to the proper health care facility or community mental health service provider for further evaluation, as soon as reasonably possible. If the screening instrument, such as the Massachusetts Youth Screening Instrument version 2 (MAYSI-2) or other comparable mental health screening instrument indicates that the juvenile is in need of emergency medical care or mental health intervention services, the detention staff shall refer the juvenile to the proper health care facility or community mental health service provider for further evaluation, recommendation and referral for treatment, if necessary.

(3) All juveniles shall receive a thorough orientation to the center's procedures, rules, programs and services. The intake process shall operate twenty-four (24) hours per day.

(4) The directors of all of the juvenile detention centers shall amend or develop written procedures for admission of juveniles who are new to the system. These shall include, but are not limited to, the following:

(a) Determine that the juvenile is legally committed to the facility;
(b) Make a complete search of the juvenile and his possessions;
(c) Dispose of personal property;
(d) Require shower and hair care, if necessary;
(e) Issue clean, laundered clothing, as needed;
(f) Issue personal hygiene articles;
(g) Perform medical, dental and mental health screening;
(h) Assign a housing unit for the juvenile;
(i) Record basic personal data and information to be used for mail and visiting lists;

(j) Assist juveniles in notifying their families of their admission and procedures for mail and visiting;

(k) Assign a registered number to the juvenile; and

(*l*) Provide written orientation materials to the juvenile.

(5) If a student's detention will cause him or her to miss one or more days of school during the academic school year, the detention center staff shall notify school district officials where the detainee last attended school by the first school day following the student's placement in the facility. Detention center staff shall not disclose youth court records to the school district, except as provided by Section 43-21-261.

(6) All juvenile detention centers shall adhere to the following minimum standards:

(a) Each center shall have a manual that states the policies and procedures for operating and maintaining the facility, and the manual shall be reviewed annually and revised as needed;

(b) Each center shall have a policy that specifies support for a drug-free workplace for all employees, and the policy shall, at a minimum, include the following:

(i) The prohibition of the use of illegal drugs;

(ii) The prohibition of the possession of any illegal drugs except in the performance of official duties;

(iii) The procedure used to ensure compliance with a drug-free workplace policy;

(iv) The opportunities available for the treatment and counseling for drug abuse; and

(v) The penalties for violation of the drug-free workplace policy;

(c) Each center shall have a policy, procedure and practice that ensures that personnel files and records are current, accurate and confidential;

(d) Each center shall promote the safety and protection of juvenile detainees from personal abuse, corporal punishment, personal injury, disease, property damage and harassment;

(e) Each center shall have written policies that allow for mail and telephone rights for juvenile detainees, and the policies are to be made available to all staff and reviewed annually;

(f) Center food service personnel shall implement sanitation practices based on State Department of Health food codes;

(g) Each center shall provide juveniles with meals that are nutritionally adequate and properly prepared, stored and served according to the State Department of Health food codes;

(h) Each center shall offer special diet food plans to juveniles under the following conditions:

(i) When prescribed by appropriate medical or dental staff; or

(ii) As directed or approved by a registered dietitian or physician; and

(iii) As a complete meal service and not as a supplement to or choice between dietary meals and regular meals;

(i) Each center shall serve religious diets when approved and petitioned in writing by a religious professional on behalf of a juvenile and approved by the juvenile detention center director;

(j) Juvenile detention center directors shall provide a written method of ensuring regular monitoring of daily housekeeping, pest control and sanitation practices, and centers shall comply with all federal, state and local sanitation and health codes;

(k) Juvenile detention center staff shall screen detainees for medical, dental and mental health needs during the intake process. If the screening indicates that medical, dental or mental health assistance is required or necessary, or if the intake officer deems it necessary, the detainee shall be provided access to appropriate health care professionals for evaluation and treatment. A medical history of all detainees shall be completed by the intake staff of the detention center immediately after arrival at the facility by using a medical history form which shall include, but not be limited to, the following:

(i) Any medical, dental and mental health treatments and medications the juvenile is taking;

(ii) Any chronic health problems such as allergies, seizures, diabetes, hearing or sight loss, hearing conditions or any other health problems; and

(iii) Documentation of all medications administered and all health care services rendered;

(*l*) Juvenile detention center detainees shall be provided access to medical care and treatment while in custody of the facility;

(m) Each center shall provide reasonable access by youth services or county counselors for counseling opportunities. The youth service or county counselor shall visit with detainees on a regular basis;

(n) Juvenile detention center detainees shall be referred to other counseling services when necessary including: mental health services; crisis intervention; referrals for treatment of drugs and alcohol and special offender treatment groups;

(o) Each center shall have a policy that restricts the time a youth can be confined to a locked cell to the following circumstances:

(i) When a youth is sleeping or sick;

(ii) When a youth is on punishment;

(iii) When there is an emergency that poses a threat to the security of the center;

(iv) When the youth has voluntarily requested cell confinement;

(v) When no less restrictive alternative exists and the youth is placed in protective custody because of a threat to his safety;

(p) Local school districts shall work collaboratively with juvenile detention center staff to provide special education services as required by state and federal law. Upon the written request of the youth court judge for the county in which the detention center is located, a local school district in the county in which the detention center is located, or a private provider agreed upon by the youth court judge and sponsoring school district, shall provide

a certified teacher to provide educational services to detainees. The youth court judge shall designate said school district which shall be defined as the sponsoring school district. The local home school district shall be defined as the school district where the detainee last attended prior to detention. Teacher selection shall be in consultation with the youth court judge. The Legislature shall annually appropriate sufficient funds for the provision of educational services, as provided under this section, to detainees in detention centers;

(q) The sponsoring school district, or a private provider agreed upon by the youth court judge and sponsoring school district, shall be responsible for providing the instructional program for the detainee while in detention. After forty-eight (48) hours of detention, excluding legal holidays and weekends, the detainee shall receive the following services which may be computer-based:

(i) Diagnostic assessment of grade-level mastery of reading and math skills;

(ii) Individualized instruction and practice to address any weaknesses identified in the assessment conducted under subparagraph (i), provided such detainee is in the center for more than forty-eight (48) hours; and

(iii) Character education to improve behavior;

(r) No later than the tenth day of detention, the detainee shall begin an extended detention education program. A team consisting of a certified teacher provided by the local sponsoring school district or a private provider agreed upon by the youth court judge and sponsoring school district, the appropriate official from the local home school district, and the youth court counselor or representative will develop an individualized education program for the detainee, where appropriate as determined by the teacher of the sponsoring school district, or a private provider agreed upon by the youth court judge and sponsoring school district. The detainee's parent or guardian shall participate on the team unless excused by the youth court judge. Failure of any party to participate shall not delay implementation of this education program;

(s) The sponsoring school district, or a private provider agreed upon by the youth court judge and sponsoring school district, shall provide the detention center with an appropriate and adequate computer lab to serve detainees. The Legislature shall annually appropriate sufficient funds to equip and maintain the computer labs. The computer lab shall become the property of the detention centers and the sponsoring school districts shall maintain and update the labs;

(t) The Mississippi Department of Education will collaborate with the appropriate state and local agencies, juvenile detention centers and local school districts to ensure the provision of educational services to every student placed in a juvenile detention center. The Mississippi Department of Education has the authority to develop and promulgate policies and procedures regarding financial reimbursements to the sponsoring school district

from school districts that have students of record or compulsory-school-age residing in said districts placed in a youth detention center. Such services may include, but not be limited to: assessment and math and reading instruction, character education and behavioral counseling. The Mississippi Department of Education shall work with the appropriate state and local agencies, juvenile detention centers and local school districts to annually determine the proposed costs for educational services to youth placed in juvenile detention centers and annually request sufficient funding for such services as necessary;

(u) Recreational services shall be made available to juvenile detainees for purpose of physical exercise;

(v) Juvenile detention center detainees shall have the opportunity to participate in the practices of their religious faith as long as such practices do not violate facility rules and are approved by the director of the juvenile detention center;

(w) Each center shall provide sufficient space for a visiting room, and the facility shall encourage juveniles to maintain ties with families through visitation, and the detainees shall be allowed the opportunity to visit with the social workers, counselors and lawyers involved in the juvenile's care;

(x) Juvenile detention centers shall ensure that staffs create transition planning for youth leaving the facilities. Plans shall include providing the youth and his or her parents or guardian with copies of the youth's detention center education and health records, information regarding the youth's home community, referrals to mental and counseling services when appropriate, and providing assistance in making initial appointments with community service providers; the transition team will work together to help the detainee successfully transition back into the home school district once released from detention. The transition team will consist of a certified teacher provided by the local sponsoring school district, or a private provider agreed upon by the youth court judge and sponsoring school district, the appropriate official from the local home school district, the school attendance officer assigned to the local home school district, and the youth court counselor or representative. The detainee's parent or guardian shall participate on the team unless excused by the youth court judge. Failure of any party to participate shall not delay implementation of this education program; and

(y) The Juvenile Detention Facilities Monitoring Unit shall monitor the detention facilities for compliance with these minimum standards, and no child shall be housed in a detention facility the monitoring unit determines is substantially out of compliance with the standards prescribed in this subsection.

(7) Programs and services shall be initiated for all juveniles once they have completed the admissions process.

(8) Programs and professional services may be provided by the detention staff, youth court staff or the staff of the local or state agencies, or those programs and professional services may be provided through contractual arrangements with community agencies.

(9) Persons providing the services required in this section must be qualified or trained in their respective fields.

(10) All directors of juvenile detention centers shall amend or develop written procedures to fit the programs and services described in this section.

SOURCES: Laws, 2002, ch. 602, § 1; Laws, 2005, ch. 471, § 5; Laws, 2006, ch. 539, § 4; Laws, 2007, ch. 568, § 1; Laws, 2008, ch. 481, § 1; Laws, 2011, ch. 510, § 1; Laws, 2012, ch. 564, § 3, eff from and after July 1, 2012.

Editor's Note — Laws of 2012, ch. 564, § 4, provides as follows:

"SECTION 4. (1) There is established the Juvenile Detention and Alternatives Task Force. The purpose of the task force is to support the expansion of juvenile detention alternatives and recommend licensing standards for juvenile detention facilities throughout the state.

"(2) The task force shall be composed of the following members who shall be appointed no later than August 1, 2012:

"(a) The statewide coordinator of the Annie E. Casey Juvenile Detention Alternatives Initiative, or his designee;

"(b) The Director of the Division of Youth Services of the Mississippi Department of Human Services, or his designee;

"(c) A representative from the Juvenile Facilities Monitoring Unit appointed by the Commissioner of the Mississippi Department of Public Safety;

"(d) Two (2) youth court judges appointed by the Mississippi Council of Youth Court Judges;

"(e) A representative from the Mississippi Sheriffs' Association appointed by the President of the Association;

"(f) Four (4) representatives from counties of this state that are engaged in the Juvenile Detention Alternatives Initiative, to be appointed by Mississippi's statewide coordinator of the Juvenile Detention Alternatives Initiative;

"(g) A representative from the Department of Mental Health appointed by the Executive Director of the Department;

"(h) Six (6) representatives from the Mississippi Juvenile Detention Directors Association appointed by the President of the Association;

"(i) Two (2) county supervisors from counties with juvenile detention centers, appointed by the President of the Mississippi Association of County Detention Supervisors;

"(j) Two (2) county administrators from counties with juvenile detention centers, appointed by the President of the Mississippi Association of Supervisors;

"(k) The State Superintendent of Education, or his designee; and

"(l) Two (2) representatives from state or local government, one (1) to be appointed by the Chairperson of the House Youth and Family Affairs Committee and one (1) to be appointed by the Chairperson of the Senate Judiciary B Committee.

"(3) The task force shall hold at least three (3) meetings before issuing its report and shall hold its first meeting no later than September 1, 2012, on the call of the statewide coordinator of the Annie E. Casey Juvenile Detention Alternatives Initiative, or his designee. At its first meeting, the task force shall elect a chairperson and a vice chairperson from its membership and shall adopt rules for transacting business and keeping records. All meetings of the task force will be open to the public and shall provide opportunities for input from representatives of any private or public entities that are involved with the juvenile justice system. Notice of all meetings shall be given as provided in the Open Meetings Act.

"(4) On or before November 1, 2013, the task force shall file a report with the Secretary of the Senate and the Clerk of the House of Representatives that includes the following:

"(a) A plan for supporting juvenile detention alternatives;

"(b) A plan for reducing the financial burden incurred by counties for providing juvenile detention services, increasing cross-county collaboration, reducing duplication of services, and maximizing support from federal, state and private sources;

"(c) Proposed juvenile detention licensing standards, which may consider national standards and the minimum standards set forth in Section 43-21-321;

"(d) A recommendation of which state agency should be authorized to promulgate, adopt and enforce the proposed licensing standards and any other regulations for juvenile detention centers;

"(e) Any recommended legislation for consideration in the 2013 Legislative Session; and

"(f) Any other issues related to juvenile detention centers or alternatives to juvenile detention deemed relevant by the task force.

"(5) The task force shall be assigned to the Division of Youth Services of the Department of Human Services for administrative purposes only, and the Division of Youth Services shall designate staff to assist the task force.

"(6) There is created an advisory group established for the purpose of providing advice, input and information to the Juvenile Detention and Alternatives Task Force. Advisory group members shall receive notice of task force meetings and shall, at the request of the Chairperson of the task force, provide assistance with research and analysis. The advisory group shall be composed of the following members who shall be appointed no later than September 15, 2012:

"(a) Two (2) representatives from children's advocacy nonprofit organizations, one (1) to be appointed by the Chairperson of the House Youth and Family Affairs Committee and one (1) to be appointed by the Chairperson of the Senate Judiciary B Committee;

"(b) Two (2) representatives of a victim's rights organization appointed by the Attorney General;

"(c) Two (2) representatives who are parents or guardians of a youth involved with the juvenile justice system, one (1) to be appointed by the Chairperson of the House Youth and Family Affairs Committee and one (1) to be appointed by the Chairperson of the Senate Judiciary B Committee;

"(d) Two (2) youths who have experience with juvenile detention appointed by the Council of Youth Court Judges;

"(e) Three (3) members appointed by the Chairperson of the Juvenile Detention and Alternatives Task Force;

"(f) Two (2) representatives who are from Mississippi public universities and have substantial experience with juvenile justice or criminal justice administration, to be appointed by the Commissioner of Higher Education;

"(g) A representative from the Mississippi Juvenile Justice Advisory Committee appointed by the Chairperson of the Committee;

"(h) A representative from the Mississippi Prosecutor's Association;

"(i) A representative from the Mississippi Public Defender Association; and

"(j) The Chairperson of the House Youth and Family Affairs Committee and the Chairperson of the Senate Judiciary B Committee, or their designees.

"(7) This section shall stand repealed on July 1, 2014.

Amendment Notes — The 2011 amendment inserted "during the academic school year" preceding "the detention center staff shall notify school district officials" in the first sentence of (5); rewrote the last sentence of (6)(p); inserted "during the academic school year" preceding "the detainee shall begin an extended detention education program" in the first sentence of (6)(q); added the second sentence of (6)(s); and made minor stylistic changes.

The 2012 amendment rewrote (6)(k); added (6)(o); and made minor stylistic changes.

§ 43-21-323. Juvenile Detention Facilities Monitoring Unit established; duties and responsibilities; confidentiality of records of monitor and communications of reporter.

(1) There is established the Juvenile Detention Facilities Monitoring Unit within the Department of Public Safety to work in cooperation with the Juvenile Justice Advisory Committee described in Section 45-1-33. The unit shall be responsible for investigating, evaluating and securing the rights of children held in juvenile justice facilities, including detention centers, training schools and group homes throughout the state to ensure that the facilities operate in compliance with national best practices and state and federal law. The monitoring unit shall only monitor group homes that serve as a dispositional placement for delinquent youth pursuant to Section 41-21-605. Nothing in this section shall be construed as giving the monitoring unit authority to monitor foster care or shelter care placements. All monitors shall be employees of the Department of Public Safety. The inspections by the unit shall encompass the following:

(a) To review and evaluate (i) all procedures set by detention centers, training schools and group homes and (ii) all records containing information related to the operations of the detention centers, training schools and group homes;

(b) To review and investigate all complaints filed with the monitoring unit concerning children's treatment in detention centers, training schools and group homes;

(c) To conduct quarterly monitoring visits of all detention centers, training schools and group homes. The monitor shall have access to an entire facility and shall conduct confidential interviews with youth and facility staff;

(d) To advise a facility on how to meet the needs of children who require immediate attention;

(e) To provide technical assistance and advice to juvenile detention facilities, which will assist the facilities in complying with state and federal law.

To carry out the duties in this subsection (1) a monitor may consult with an administrator, employee, child, parent, expert or other individual in the course of monitoring or investigating. In addition, the monitor may review court documents and other confidential records as necessary to fulfill these duties.

(2) Additional duties of the monitoring unit are as follows:

(a) To make available on a quarterly basis to the Governor, Lieutenant Governor and each member of the Legislature and each member of a county board of supervisors, a report that describes:

(i) The work of the monitoring unit;

(ii) The results of any review or investigation undertaken by the monitoring unit;

(iii) Any allegations of abuse or injury of a child; and

(iv) Any problems concerning the administration of a detention center.

The reports described in this subsection shall keep the names of all children, parents and employees confidential.

(b) To promote awareness among the public and the children held in detention by providing the following:

(i) How the monitoring unit may be contacted;

(ii) The purpose of the monitoring unit; and

(iii) The services that the monitoring unit provides.

(3) The records of a monitor shall be confidential. Any child, staff member, parent or other interested individual may communicate to a monitor in person, by mail, by phone, or any other means. All communications shall be kept confidential and privileged, except that the youth court and the facility shall have access to such records, but the identity of reporters shall remain confidential.

SOURCES: Laws, 2005, ch. 471, § 1; Laws, 2009, ch. 398, § 2; Laws, 2010, ch. 543, § 1, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment rewrote the section, expanding the duties of the juvenile detention facilities monitoring unit and providing that all monitors of the unit shall be employees of the department of public safety.

INTAKE

§ 43-21-357. Intake procedure.

(1) After receiving a report, the youth court intake unit shall promptly make a preliminary inquiry to determine whether the interest of the child, other children in the same environment or the public requires the youth court to take further action. As part of the preliminary inquiry, the youth court intake unit may request or the youth court may order the Department of Human Services, the Department of Youth Services, any successor agency or any other qualified public employee to make an investigation or report concerning the child and any other children in the same environment, and present the findings thereof to the youth court intake unit. If the youth court intake unit receives a neglect or abuse report, the youth court intake unit shall immediately forward the complaint to the Department of Human Services to promptly make an investigation or report concerning the child and any other children in the same environment and promptly present the findings thereof to the youth court intake unit. If it appears from the preliminary inquiry that the child or other children in the same environment are within the jurisdiction of the court, the youth court intake unit shall recommend to the youth court:

(a) That the youth court take no action;

(b) That an informal adjustment be made;

(c) The Department of Human Services, Division of Family and Children Services, monitor the child, family and other children in the same environment;

(d) That the child is warned or counseled informally;

(e) That the child be referred to the youth court drug court; or

(f) That a petition be filed.

(2) The youth court shall then, without a hearing:

(a) Order that no action be taken;

(b) Order that an informal adjustment be made;

(c) Order that the Department of Human Services, Division of Family and Children Services, monitor the child, family and other children in the same environment;

(d) Order that the child is warned or counseled informally;

(e) That the child be referred to the youth court drug court; or

(f) Order that a petition be filed.

(3) If the preliminary inquiry discloses that a child needs emergency medical treatment, the judge may order the necessary treatment.

SOURCES: Laws, 1979, ch. 506, § 43; Laws, 1986, ch. 416, § 2; Laws, 1997, ch. 440, § 11; Laws, 1998, ch. 367, § 5; Laws, 2012, ch. 410, § 1, eff from and after passage (approved Apr. 18, 2012.)

Editor's Note — Laws of 2012, ch. 410, § 4, provides:

"SECTION 4. Sections 1 and 2 of this act shall take effect and be in force from and after its passage (approved April 18, 2012), and the remainder of this act shall take effect and be in force from and after July 1, 2012."

Amendment Notes — The 2012 amendment added (1)(e) and (2)(e); and made minor stylistic changes.

ADJUDICATION

SEC.

43-21-561. Adjudication of status, standard of proof, and findings.

§ 43-21-559. Evidence admissible.

JUDICIAL DECISIONS

I. Under Current Law.

2. Particular applications.

I. Under Current Law.

2. Particular applications.

In a delinquency adjudication for the act of burglary, any statement by the juvenile was inadmissible under Miss. Code Ann. § 43-21-559 (Rev. 2009) because it was uncorroborated where the only other evidence presented was a low-resolution, home-surveillance video, which directed contradicted the juvenile's statement. Testimony of witnesses who merely had watched the surveillance video likewise did not corroborate such an "admission." C.K.B. v. Harrison County Youth Court, 36 So. 3d 1267 (Miss. 2010).

§ 43-21-561. Adjudication of status, standard of proof, and findings.

(1) If the youth court finds on proof beyond a reasonable doubt that a child is a delinquent child or a child in need of supervision, the youth court shall enter an order adjudicating the child to be a delinquent child or a child in need of supervision.

(2) Where the petition alleges that the child is a delinquent child, the youth court may enter an order that the child is a child in need of supervision on proof beyond a reasonable doubt that the child is a child in need of supervision.

(3) If the court finds from a preponderance of the evidence that the child is a neglected child, an abused child, a dependent child or a child in need of special care the youth court shall enter an order adjudicating the child to be a neglected child, an abused child, dependent child or a child in need of special care.

(4) No decree or order of adjudication concerning any child shall recite that a child has been found guilty; but it shall recite that a child is found to be a delinquent child or a child in need of supervision or a neglected child or an abused child or a sexually abused child or a dependent child or a child in need of special care. Upon a written motion by a party, the youth court shall make written findings of fact and conclusions of law upon which it relies for the adjudication that the child is a delinquent child, a child in need of supervision, a neglected child, an abused child, a dependent child or a child in need of special care.

(5) No adjudication upon the status of any child shall operate to impose any of the civil disabilities ordinarily imposed on an adult because of a criminal conviction, nor shall any child be deemed a criminal by reason of adjudication, nor shall that adjudication be deemed a conviction. A person in whose interest proceedings have been brought in the youth court may deny, without any penalty, the existence of those proceedings and any adjudication made in those proceedings. Except for the right of a defendant or prosecutor in criminal proceedings and a respondent or a youth court prosecutor in youth court proceedings to cross-examine a witness, including a defendant or respondent, to show bias or interest, no adjudication shall be used for impeachment purposes in any court.

SOURCES: Laws, 1979, ch. 506, § 63; Laws, 1980, ch. 550, § 22; Laws, 2002, ch. 410, § 1; Laws, 2010, ch. 349, § 2, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment, in (3), twice inserted "a dependent child or a child in need of special care"; and in (4), added "or a child in need of special care" in the first sentence and "a dependent child or a child in need of special care" at the end and made related changes.

JUDICIAL DECISIONS

I. Under Current Law.

5. Particular applications.

There was insufficient evidence to adjudicate a juvenile a delinquent child for the act of burglary, a violation of Miss. Code Ann. § 97-17-23(1), where there was no evidence that the juvenile broke and entered the dwelling house, or had any intent to commit any crime therein; thus, neither element of burglary was proven beyond a reasonable doubt. C.K.B. v. Harrison County Youth Court, 36 So. 3d 1267 (Miss. 2010).

In a case in which a mother appealed a youth court's adjudication that she had neglected her two minor children and had placed the children in the legal custody of the Department of Human Services (DHS), the facts supported the youth court's finding that, at minimum, the children were not being provided the proper and necessary care or support or other care necessary for their well-being. The youth court was presented with conflicting testimony about the mother's care and support for her children, and based on the mother's alarming actions and statements that she would turn the children over to DHS, it could not be concluded with confidence that the youth court judge's decision was manifestly wrong. S. v. State, 47 So. 3d 715 (Miss. Ct. App. 2010), writ of certiorari denied en banc by 49 So. 3d 1139, 2010 Miss. LEXIS 606 (Miss. 2010).

ATTORNEY GENERAL OPINIONS

If acts of a student, although not rising to the level of a felony, are such that the student poses a threat to the safety of himself or others or will disrupt the educational process at the Alternative School, then the School Board may remove the student from the school system altogether. If a compulsory-school-age child is expelled from the Alternative School for criminal or violent behavior, the school district must refer the case to the youth court if probable cause exists. Maples, February 2, 2007, A.G. Op. #07-00025, 2007 Miss. AG LEXIS 1.

DISPOSITION

§ 43-21-605. Disposition alternatives in delinquency cases.

(1) In delinquency cases, the disposition order may include any of the following alternatives:

(a) Release the child without further action;

(b) Place the child in the custody of the parents, a relative or other persons subject to any conditions and limitations, including restitution, as the youth court may prescribe;

(c) Place the child on probation subject to any reasonable and appropriate conditions and limitations, including restitution, as the youth court may prescribe;

(d) Order terms of treatment calculated to assist the child and the child's parents or guardian which are within the ability of the parent or guardian to perform;

(e) Order terms of supervision which may include participation in a constructive program of service or education or civil fines not in excess of Five Hundred Dollars ($500.00), or restitution not in excess of actual damages caused by the child to be paid out of his own assets or by performance of services acceptable to the victims and approved by the youth court and reasonably capable of performance within one (1) year;

(f) Suspend the child's driver's license by taking and keeping it in custody of the court for not more than one (1) year;

(g) Give legal custody of the child to any of the following:

(i) The Department of Human Services for appropriate placement; or

(ii) Any public or private organization, preferably community-based, able to assume the education, care and maintenance of the child, which has been found suitable by the court; or

(iii) The Division of Youth Services for placement in the least restrictive environment, except that no child under the age of ten (10) years shall be committed to the state training school. Only a child who has been adjudicated delinquent for a felony or who has been adjudicated delinquent three (3) or more times for a misdemeanor offense may be committed to the training school. For the purposes of this section, a misdemeanor offense does not include contempt of court for a probation violation, unless the probation violation constitutes a charge that would be a crime if committed by an adult. In the event a child is committed to the Oakley Youth Development Center by the court, the child shall be deemed to be committed to the custody of the Department of Human Services which may place the child in the Oakley Youth Development Center or another appropriate facility.

The training school may retain custody of the child until the child's twentieth birthday but for no longer. When the child is committed to the training school, the child shall remain in the legal custody of the training school until the child has made sufficient progress in treatment and rehabilitation and it is in the best interest of the child to release the child. However, the superintendent of the state training school, in consultation with the treatment team, may parole a child at any time he or she may deem it in the best interest and welfare of such child. Ten (10) business days before the parole, the training school shall notify the committing court of the pending release. The youth court may then arrange subsequent placement after a reconvened disposition hearing, except that the youth court may not recommit the child to the training school or any other secure facility without an adjudication of a new offense or probation or parole violation. The Department of Human Services shall ensure that staffs create transition planning for youth leaving the facilities. Plans shall include providing the youth and his or her parents or guardian with copies of the youth's training school education and health records, information regarding the youth's home community, referrals to mental and counseling services when appropriate, and providing assistance in making initial appointments with community service providers. Before assigning the custody of any child to any private

institution or agency, the youth court through its designee shall first inspect the physical facilities to determine that they provide a reasonable standard of health and safety for the child. No child shall be placed in the custody of the state training school for a status offense or for contempt of or revocation of a status offense adjudication unless the child is contemporaneously adjudicated for having committed an act of delinquency that is not a status offense. A disposition order rendered under this subparagraph shall meet the following requirements:

1. The disposition is the least restrictive alternative appropriate to the best interest of the child and the community;

2. The disposition allows the child to be in reasonable proximity to the family home community of each child given the dispositional alternatives available and the best interest of the child and the state; and

3. The disposition order provides that the court has considered the medical, educational, vocational, social and psychological guidance, training, social education, counseling, substance abuse treatment and other rehabilitative services required by that child as determined by the court;

(h) Recommend to the child and the child's parents or guardian that the child attend and participate in the Youth Challenge Program under the Mississippi National Guard, as created in Section 43-27-203, subject to the selection of the child for the program by the National Guard; however, the child must volunteer to participate in the program. The youth court shall not order any child to apply for or attend the program;

(i)(i) Adjudicate the juvenile to the Statewide Juvenile Work Program if the program is established in the court's jurisdiction. The juvenile and his or her parents or guardians must sign a waiver of liability in order to participate in the work program. The judge will coordinate with the youth services counselors as to placing participants in the work program;

(ii) The severity of the crime, whether or not the juvenile is a repeat offender or is a felony offender will be taken into consideration by the judge when adjudicating a juvenile to the work program. The juveniles adjudicated to the work program will be supervised by police officers or reserve officers. The term of service will be from twenty-four (24) to one hundred twenty (120) hours of community service. A juvenile will work the hours to which he or she was adjudicated on the weekends during school and weekdays during the summer. Parents are responsible for a juvenile reporting for work. Noncompliance with an order to perform community service will result in a heavier adjudication. A juvenile may be adjudicated to the community service program only two (2) times;

(iii) The judge shall assess an additional fine on the juvenile which will be used to pay the costs of implementation of the program and to pay for supervision by police officers and reserve officers. The amount of the fine will be based on the number of hours to which the juvenile has been adjudicated;

(j) Order the child to participate in a youth court work program as provided in Section 43-21-627;

(k) Order terms of house arrest under the intensive supervision program as created in Sections 47-5-1001 through 47-5-1015. The Department of Human Services shall take bids for the placement of juveniles in the intensive supervision program. The Department of Human Services shall promulgate rules regarding the supervision of juveniles placed in the intensive supervision program. For each county there shall be seventy-five (75) slots created in the intensive supervision program for juveniles. Any youth ordered into the intensive home-based supervision program shall receive comprehensive strength-based needs assessments and individualized treatment plans. Based on the assessment, an individualized treatment plan shall be developed that defines the supervision and programming that is needed by a youth. The treatment plan shall be developed by a multidisciplinary team that includes the family of the youth whenever possible. The juvenile shall pay Ten Dollars ($10.00) to offset the cost of administering the alcohol and drug test. The juvenile must attend school, alternative school or be in the process of working toward a general educational development (GED) certificate;

(*l*) Order the child into a juvenile detention center operated by the county or into a juvenile detention center operated by any county with which the county in which the court is located has entered into a contract for the purpose of housing delinquents. The time period for detention cannot exceed ninety (90) days, and any detention exceeding forty-five (45) days shall be administratively reviewed by the youth court no later than forty-five (45) days after the entry of the order. At that time the youth court counselor shall review the status of the youth in detention and shall report any concerns to the court. The youth court judge may order that the number of days specified in the detention order be served either throughout the week or on weekends only. No first-time nonviolent youth offender shall be committed to a detention center for a period in excess of ninety (90) days until all other options provided for in this section have been considered and the court makes a specific finding of fact by a preponderance of the evidence by assessing what is in the best rehabilitative interest of the child and the public safety of communities and that there is no reasonable alternative to a nonsecure setting and therefore commitment to a detention center is appropriate.

If a child is committed to a detention center for ninety (90) days, the disposition order shall meet the following requirements:

(i) The disposition order is the least restrictive alternative appropriate to the best interest of the child and the community;

(ii) The disposition order allows the child to be in reasonable proximity to the family home community of each child given the dispositional alternatives available and the best interest of the child and the state; and

(iii) The disposition order provides that the court has considered the medical, educational, vocational, social and psychological guidance, train-

ing, social education, counseling, substance abuse treatment and other rehabilitative services required by that child as determined by the court;

(m) The judge may consider house arrest in an intensive supervision program as a reasonable prospect of rehabilitation within the juvenile justice system. The Department of Human Services shall promulgate rules regarding the supervision of juveniles placed in the intensive supervision program; or

(n) Referral to A-team provided system of care services.

(2) If a disposition order requires that a child miss school due to other placement, the youth court shall notify a child's school while maintaining the confidentiality of the youth court process. If a disposition order requires placement of a child in a juvenile detention facility, the facility shall comply with the educational services and notification requirements of Section 43-21-321.

(3) In addition to any of the disposition alternatives authorized under subsection (1) of this section, the disposition order in any case in which the child is adjudicated delinquent for an offense under Section 63-11-30 shall include an order denying the driver's license and driving privileges of the child as required under Section 63-11-30(9).

(4) If the youth court places a child in a state-supported training school, the court may order the parents or guardians of the child and other persons living in the child's household to receive counseling and parenting classes for rehabilitative purposes while the child is in the legal custody of the training school. A youth court entering an order under this subsection (4) shall utilize appropriate services offered either at no cost or for a fee calculated on a sliding scale according to income unless the person ordered to participate elects to receive other counseling and classes acceptable to the court at the person's sole expense.

(5) Fines levied under this chapter shall be paid into the general fund of the county but, in those counties wherein the youth court is a branch of the municipal government, it shall be paid into the municipal treasury.

(6) Any institution or agency to which a child has been committed shall give to the youth court any information concerning the child as the youth court may at any time require.

(7) The youth court shall not place a child in another school district who has been expelled from a school district for the commission of a violent act. For the purpose of this subsection, "violent act" means any action which results in death or physical harm to another or an attempt to cause death or physical harm to another.

(8) The youth court may require drug testing as part of a disposition order. If a child tests positive, the court may require treatment, counseling and random testing, as it deems appropriate. The costs of such tests shall be paid by the parent, guardian or custodian of the child unless the court specifically finds that the parent, guardian or custodian is unable to pay.

(9) The Mississippi Department of Human Services, Division of Youth Services, shall operate and maintain services for youth adjudicated delinquent

at the Oakley Youth Development Center. The program shall be designed for children committed to the training schools by the youth courts. The purpose of the program is to promote good citizenship, self-reliance, leadership and respect for constituted authority, teamwork, cognitive abilities and appreciation of our national heritage. The program must use evidenced-based practices and gender-specific programming and must develop an individualized and specific treatment plan for each youth. The Division of Youth Services shall issue credit towards academic promotions and high school completion. The Division of Youth Services may award credits to each student who meets the requirements for a general education development certification. The Division of Youth Services must also provide to each special education eligible youth the services required by that youth's individualized education plan.

SOURCES: Laws, 1979, ch. 506, § 66; Laws, 1980, ch. 550, § 23; Laws, 1993, ch. 560, § 3; Laws, 1994, ch. 473, § 2; Laws, 1994, ch. 607, § 6; Laws, 1995, ch. 540, § 3; Laws, 1997, ch. 563, § 2; Laws, 1998, ch. 407, § 2; Laws, 1999, ch. 329, § 5; Laws, 2001, ch. 581, § 1; Laws, 2004, ch. 590, § 1; Laws, 2005, ch. 471, § 6; Laws, 2005, ch. 535, § 2; Laws, 2006, ch. 539, § 5; Laws, 2007, ch. 568, § 2; Laws, 2008, ch. 481, § 2; Laws, 2008, ch. 555, § 2; Laws, 2009, ch. 559, § 1; Laws, 2010, ch. 371, § 1; Laws, 2010, ch. 554, § 4; Laws, 2011, ch. 459, § 1, eff from and after July 1, 2011.

Joint Legislative Committee Note — Section 1 of ch. 371, Laws of 2010, effective from and after July 1, 2010, amended this section. Section 4 of ch. 554, Laws of 2010, effective from and after July 1, 2011, also amended this section. As set out above, this section reflects the language of Section 4 of ch. 554, Laws of 2010, which contains language that specifically provides that it supersedes § 43-21-605 as amended by Laws of 2010, ch. 371.

Amendment Notes — The first 2010 amendment (ch. 371), effective from and after July 1, 2010, in the first paragraph of (1)(g)(iii), in the first sentence, substituted "placement in the least restrictive environment" for "placement in the state-supported training school," and deleted "and no first-time nonviolent youth offenders shall be committed to the state training school until all other options provided for in this section have been considered and the court makes a specific finding of fact by a preponderance of the evidence by assessing what is in the best rehabilitative interest of the child and the public safety of communities and that there is no reasonable alternative to a nonsecure setting and therefore secure commitment is appropriate" from the end of the sentence, and added the last three sentences; and in the second paragraph of (1)(g)(iii), substituted "Ten (10) business days prior to" for "Twenty (20) days prior to" at the beginning of the fourth sentence.

The second 2010 amendment (ch. 554), effective from and after July 1, 2011, in the first paragraph of (1)(g)(iii), in the first sentence, substituted "placement in the least restrictive environment" for "placement in the state-supported training school," and deleted "and no first-time nonviolent youth offenders shall be committed to the state training school until all other options provided for in this section have been considered and the court makes a specific finding of fact by a preponderance of the evidence by assessing what is in the best rehabilitative interest of the child and the public safety of communities and that there is no reasonable alternative to a nonsecure setting and therefore secure commitment is appropriate" from the end of the sentence, and added the last three sentences; in the second paragraph of (1)(g)(iii), substituted "Ten (10) business days prior to" for "Twenty (20) days prior to" at the beginning of the fourth sentence; and in (9), substituted "delinquent at the Oakley Youth Development Center" for "delinquent at Oakley Training School" at the end of the first sentence.

The 2011 amendment added (1)(k); and made minor stylistic changes.

ATTORNEY GENERAL OPINIONS

If acts of a student, although not rising to the level of a felony, are such that the student poses a threat to the safety of himself or others or will disrupt the educational process at the Alternative School, then the School Board may remove the student from the school system altogether. If a compulsory-school-age child is expelled from the Alternative School for criminal or violent behavior, the school district must refer the case to the youth court if probable cause exists. Maples, February 2, 2007, A.G. Op. #07-00025, 2007 Miss. AG LEXIS 1.

§ 43-21-609. Dispositional alternatives in neglect and abuse cases.

JUDICIAL DECISIONS

I. Under Current Law.

5. Miscellaneous.

I. Under Current Law.

5. Miscellaneous.

In a case in which a mother appealed a youth court's adjudication that she had neglected her two minor children and had placed the children in the legal custody of the Department of Human Services (DHS), the facts supported the youth court's finding that, at minimum, the children were not being provided the proper and necessary care or support or other care necessary for their well-being. The youth court was presented with conflicting testimony about the mother's care and support for her children, and based on the mother's alarming actions and statements that she would turn the children over to DHS, it could not be concluded with confidence that the youth court judge's decision was manifestly wrong. S. v. State, 47 So. 3d 715 (Miss. Ct. App. 2010), writ of certiorari denied en banc by 49 So. 3d 1139, 2010 Miss. LEXIS 606 (Miss. 2010).

YOUTH COURT SUPPORT PROGRAM

SEC.

§ 43-21-803. Tony Gobar Individualized Assessment and Comprehensive Community Intervention Initiative (IACCII) Program established; purposes; eligibility for grants; programs and services; application for assistance; Tony Gobar "IACCII" Fund created.

(1) There is established the Tony Gobar Individualized Assessment and Comprehensive Community Intervention Initiative (IACCII) Program for the purposes of:

(a)(i) Providing comprehensive strength-based needs assessments, individualized treatment plans and community-based services for certain youth who would otherwise be committed to the training schools. The

IACCII ensures that youth and their families can access necessary services available in their home communities; and

(ii) Providing grants to faith-based organizations and nonprofit 501(c)(3) organizations that develop and operate community-based alternatives to the training schools and detention centers. In order to be eligible for a grant under this paragraph, a faith-based or nonprofit 501(c)(3) organization in cooperation with a youth court must develop and operate a juvenile justice alternative sanction designed for delinquent youths. The program must be designed to decrease reliance on commitment in juvenile detention facilities and training schools.

(b) Programs established pursuant to this subsection must not duplicate existing programs or services and must incorporate best practices principles and positive behavioral interventions. The Department of Human Services shall have sole authority and power to determine the programs to be funded pursuant to this section.

(2) A faith-based or nonprofit 501(c)(3) must submit an application to the Department of Human Services. The application must include a description of the purpose for which assistance is requested, the amount of assistance requested and any other information required by the Department of Human Services.

(3) The Department of Human Services shall have all powers necessary to implement and administer the program established under this section, and the department shall promulgate rules and regulations, in accordance with the Mississippi Administrative Procedures Law, necessary for the implementation of this section.

(4)(a) There is created in the State Treasury a special fund to be designated as the "Tony Gobar IACCII Fund," which shall consist of funds appropriated or otherwise made available by the Legislature in any manner and funds from any other source designated for deposit into such fund. Unexpended amounts remaining in the fund at the end of a fiscal year shall not lapse into the State General Fund, and any investment earnings or interest earned on amounts in the fund shall be deposited to the credit of the fund. Monies in the fund shall be used by the Division of Youth Services for the purposes described in this section.

(b)(i) During the regular legislative session held in calendar year 2007, the Legislature may appropriate an amount not to exceed Two Million Five Hundred Thousand Dollars ($2,500,000.00) to the Tony Gobar IACCII Fund.

(ii) During each regular legislative session subsequent to the 2007 Regular Session, the Legislature shall appropriate Two Million Five Hundred Thousand Dollars ($2,500,000.00) to the Tony Gobar IACCII Fund.

SOURCES: Laws, 2006, ch. 539, § 8; Laws, 2007, ch. 557, § 2; Laws, 2009, ch. 498, § 1; Laws, 2012, ch. 427, § 1, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment removed the former repealer provision by deleting (5), which read: "This section shall stand repealed from and after July 1, 2012."

CHAPTER 27

Department of Youth Services

IN GENERAL

§ 43-27-10. Powers of Department of Human Services.

(1) The Mississippi Department of Human Services shall exercise executive and administrative supervision over all state-owned facilities used for the detention, training, care, treatment and aftercare supervision of delinquent children properly committed to or confined in said facilities by a court on account of such delinquency; provided, however, such executive and administrative supervision under state-owned facilities shall not extend to any institutions and facilities for which executive and administrative supervision has been provided otherwise by law through other agencies.

(2) Such facilities shall include, but not be limited to, the Oakley Training School, which is now the Oakley Youth Development Center, created by Chapter 205, Laws of 1942, and those facilities authorized by Chapter 652, Laws of 1994.

(3) The department shall have the power as a corporate body to receive, hold and use personal, real and mixed property donated to them or property acquired under Section 43-27-35, and shall have such other corporate authority as shall now or hereafter be necessary for the operation of any such facility. The department shall be responsible for the planning, development and coordination of a statewide, comprehensive youth services program designed to train and rehabilitate children in order to prevent, control and retard juvenile delinquency.

(4) The department is authorized to develop and implement diversified public, private, or contractual programs and facilities to promote, enhance, provide and assure the opportunities for the successful care, training and treatment of delinquent children properly committed to or confined in any facility under its control. Such programs and facilities may include, but not be limited to, training schools, foster homes, halfway houses, forestry camps, regional assessment, classification and diagnostic centers, detention centers, group homes, regional and community-based juvenile intensive residential treatment facilities, specialized and therapeutic programs and facilities, and other state and local community-based programs and facilities.

(5) The department is authorized to acquire whatever hazard, casualty or workers' compensation insurance is necessary for any property, real or personal, owned, leased or rented by the department or for any employees or personnel hired by the department and may acquire professional liability insurance on all employees as deemed necessary and proper by the department. All premiums due and payable on account thereof shall be paid out of the funds of the department.

SOURCES: Laws, 1973, ch. 438, § 5; Laws, 1978, ch. 313, § 1; Laws, 1984, ch. 495, § 20; reenacted and amended, Laws, 1985, ch. 474, § 15; Laws, 1986, ch. 438, § 30; Laws, 1987, ch. 483, § 31; Laws, 1988, ch. 442, § 28; Laws, 1989, ch. 537, § 27; Laws, 1990, ch. 518, § 28; Laws, 1991, ch. 618, § 27; Laws, 1992, ch. 491 § 29; Laws, 1994, ch. 587, § 2; Laws, 2009, ch. 408, § 1; Laws, 2010, ch. 554, § 5, eff from and after July 1, 2011.

Amendment Notes — The 2010 amendment inserted "which is now the Oakley Youth Development Center" in (2).

§ 43-27-11. Control and management by Department of Human Services; funds.

The Mississippi Department of Human Services shall succeed to the exclusive control of all records, books, papers, equipment and supplies, and all lands, buildings and other real and personal property now or hereafter belonging to or assigned to the use and benefit or under the control of the Oakley Youth Development Center, and shall have the exercise and control of the use, distribution and disbursement of all funds, appropriations and taxes now or hereafter in possession, levied, collected or received or appropriated for the use, benefit, support and maintenance of these two (2) institutions, and the department shall have general supervision of all the affairs of the two (2) institutions herein named, and the care and conduct of all buildings and grounds, business methods and arrangements of accounts and records, the organization of the administrative plans of each institution, and all other matters incident to the proper functioning of the institutions. The department shall have full authority over the operation of any and all farms at each of said institutions and over the distribution of agricultural, dairy, livestock and any and all other products therefrom and over all funds received from the sale of hogs and livestock. All sums realized from the sale of products manufactured

and fabricated in the shops of the vocational departments of such institutions shall be placed in the revolving fund of the respective institutions in which said products were manufactured, fabricated and sold.

The department shall be authorized to lease the lands for oil, gas and mineral exploration, and for such other purposes as the department deems to be appropriate, on such terms and conditions as the department and lessee agree. The department may contract with the State Forestry Commission for the proper management of forest lands and the sale of timber, and the department is expressly authorized to sell timber and forestry products. The department is further authorized to expend the net proceeds from incomes from all leases and timber sales exclusively for the instructional purposes or operational expenses, or both, at the two (2) institutions under its jurisdiction.

The granting of any leases for oil, gas and mineral exploration shall be on a public bid basis as prescribed by law.

SOURCES: Codes, 1942, § 6744-07; Laws, 1948, ch. 429, § 7; Laws, 1950, ch. 197; Laws, 1964, ch. 561; Laws, 1970, ch. 391, § 8; Laws, 1973, ch. 438, § 16; Laws, 1995, ch. 324, § 2; Laws, 2003, ch. 494, § 2; Laws, 2010, ch. 554, § 6, eff from and after July 1, 2011.

Amendment Notes — The 2010 amendment, effective from and after July 1, 2011, substituted "Oakley Youth Development Center" for "Columbia Training School and the Oakley Training School" in the first sentence in the first paragraph.

§ 43-27-14. Department of Youth Services authorized to accept federal and other funds, attorney general is legal representative of department.

The Department of Youth Services shall have the authority to accept any allotments of federal funds and commodities and shall manage and dispose of them in whatever manner may be required by federal law, and may take advantage of any federal programs, grants-in-aid, or other public or private assistance which may be offered or available which will accomplish or further the objectives of the department. Except as otherwise authorized in Section 7-5-39, the Attorney General shall be the legal representative of the department.

SOURCES: Laws, 1973, ch. 438, § 7; Laws, 2012, ch. 546, § 20, eff from and after July 1, 2012.

Amendment Notes — The 2012 amendment added the exception at the beginning of the last sentence.

§ 43-27-20. Division of Community Services; Director [Repealed effective July 1, 2015].

(a) Within the Department of Youth Services there shall be a Division of Community Services which shall be headed by a director appointed by and responsible to the Director of the Department of Youth Services. He shall hold

a master's degree in social work or a related field and shall have no less than three (3) years' experience in social services, or in lieu of such degree and experience, he shall have a minimum of eight (8) years' experience in social work or a related field. He shall employ and assign the community workers to serve in the various areas in the state and any other supporting personnel necessary to carry out the duties of the Division of Community Services.

(b) The Director of the Division of Community Services shall assign probation and aftercare workers to the youth court or family court judges of the various court districts upon the request of the individual judge on the basis of case load and need, when funds are available. The probation and aftercare workers shall live in their respective districts except upon approval of the Director of the Division of Community Services. The Director of the Division of Community Services is authorized to assign a youth services counselor to a district other than the district in which the youth services counselor lives upon the approval of the youth court judge of the assigned district and the Director of the Division of Youth Services. Every placement shall be with the approval of the youth court or the family court judge, and a probation and aftercare worker may be removed for cause from a youth or family court district.

(c) Any counties or cities which, on July 1, 1973, have court counselors or similar personnel may continue using this personnel or may choose to come within the statewide framework.

(d) A probation and aftercare worker may be transferred by the division from one (1) court to another after consultation with the judge or judges in the court to which the employee is currently assigned.

(e) The Division of Community Services shall have such duties as the Department of Youth Services shall assign to it which shall include, but not be limited to, the following:

(1) Preparing the social, educational and home-life history and other diagnostic reports on the child for the benefit of the court or the training school; however, this provision shall not abridge the power of the court to require similar services from other agencies, according to law.

(2) Serving in counseling capacities with the youth or family courts.

(3) Serving as probation agents for the youth or family courts.

(4) Serving, advising and counseling of children in the various institutions under the control of the Division of Juvenile Correctional Institutions as may be necessary to the placement of the children in proper environment after release and the placement of children in suitable jobs where necessary and proper.

(5) Supervising and guiding of children released or conditionally released from institutions under the control of the Division of Juvenile Correctional Institutions.

(6) Counseling in an aftercare program.

(7) Coordinating the activities of supporting community agencies which aid in the social adjustment of children released from the institution and in an aftercare program.

(8) Providing or arranging for necessary services leading to the rehabilitation of delinquents, either within the division or through cooperative arrangements with other appropriate agencies.

(9) Providing counseling and supervision for any child under ten (10) years of age who has been brought to the attention of the court when other suitable personnel is not available and upon request of the court concerned.

(10) Supervising the aftercare program and making revocation investigations at the request of the court.

(f) This section shall stand repealed on July 1, 2015.

SOURCES: Laws, 1973, ch. 438, § 10; Laws, 1998, ch. 552, § 1; Laws, 2000, ch. 351, § 1; Laws, 2003, ch. 494, § 1; Laws, 2009, ch. 396, § 1; Laws, 2012, ch. 470, § 5, eff from and after June 30, 2012.

Amendment Notes — The 2012 amendment extended the repealer provision from "July 1, 2012" to "July 1, 2015" in (f).

§ 43-27-25. Persons having mental illness or intellectual disability shall not be committed to institutions under control of department of youth services.

No person shall be committed to an institution under the control of the Department of Youth Services who is seriously handicapped by having mental illness or an intellectual disability. If after a person is referred to the training schools it is determined that he has mental illness or an intellectual disability to an extent that he could not be properly cared for in its custody, the director may institute necessary legal action to accomplish the transfer of such person to such other state institution as, in his judgment, is best qualified to care for him in accordance with the laws of this state. The department shall establish standards with regard to the physical and mental health of persons which it can accept for commitment.

SOURCES: Laws, 1973, ch. 438, § 12; Laws, 2010, ch. 476, § 74, eff from and after passage (approved Apr. 1, 2010.)

Amendment Notes — The 2010 amendment rewrote the first and second sentences.

§ 43-27-39. Use of Columbia Training School as secure training school for juvenile delinquents to be discontinued; all youth adjudicated to training school to be housed at Oakley Training School.

(1) The purpose of this section is to ensure that Mississippi's juvenile justice system is cost-efficient and effective at reducing juvenile crime and to create a continuum of options for Mississippi's youth court judges so that they are better equipped to protect our communities and to care for our children.

(2) The Columbia Training School shall no longer operate as a secure training school for juvenile delinquents. All youth, both male and female,

committed to the custody of the Department of Human Services and adjudicated to training school shall be housed at the Oakley Youth Development Center. The Oakley Youth Development Center shall provide gender-specific treatment for youth who are adjudicated delinquent.

(3) Any portion of Columbia Training School property and facilities described in Section 1 of Chapter 553, Laws of 2012, may be conveyed or transferred to the Board of Supervisors of Marion County, Mississippi.

SOURCES: Laws, 2008, ch. 555, § 1; Laws, 2010, ch. 526, § 2; Laws, 2010, ch. 554, § 7; Laws, 2012, ch. 553, § 2, eff from and after passage (approved May 22, 2012.)

Joint Legislative Committee Note — Section 2 of ch. 526, Laws of 2010, effective from and after passage (approved Apr. 14, 2010), amended this section. Section 7 of ch. 554, Laws of 2010, effective from and after July 1, 2011, also amended this section. As set out above, this section reflects the language of Section 7 of ch. 554, Laws of 2010, which contains language that specifically provides that it supersedes § 43-27-39 as amended by Laws of 2010, ch. 526.

Editor's Note — Laws of 2010, ch. 526, § 1, provides:

"SECTION 1. (1) The Department of Finance and Administration, acting on behalf of the Department of Human Services, is authorized to lease certain real property located on the Columbia Training School campus in the City of Columbia, Marion County, Mississippi, being more particularly described as follows:

"A parcel in Marion County, Mississippi, containing approximately 214 acres located within the City of Columbia at the North East corner of the intersection of Hwy. 44 and National Guard Road being more particularly described as follows:

"Commencing at the South West corner of Section 34, T4N, R18W, thence run N 00°37′10.95″ W for a distance of 973.00 feet; thence run N 89°29′39.93″ E for a distance of 43.53 feet to a point being 50 feet East of the center line of Hwy. 44; also being the POINT OF BEGINNING of said parcel, thence run N 89°33′52.61″ E for a distance of 394.66 feet; thence run S 00°00′ E for a distance of 244.75 feet; thence run S 90°00′ E for a distance of 869.36 feet; thence run N 58°56′17.10″ E for a distance of 636.66 feet; thence run N 45°00′ E for a distance of 1,776.45 feet; thence run N 00°00′ E for a distance of 510.0 feet; thence run N 90°00′ W for a distance of 493.36 feet; thence run N 00°24′31.67″ E for a distance of 1,920.83 feet to a point on the South 50 foot right-of-way line of Hwy. 44; then follow the 50 foot right-of-way line of Hwy. 44 in a South-westerly direction. From said point thence run S 83°50′0.64″ W for a distance of 541.68 feet; thence run along a counter-clock-wise curve for an arc distance of 209.59 feet and having a radius of 1,450 feet and a chord bearing and distance of S 77°03′30.84″ W for a distance of 209.41 feet; thence run S 72°55′03.62″ W for a distance of 1,220.06 feet; thence run along a counter-clock-wise curve for an arc distance of 650.21 feet and having a radius of 520.0 feet and a chord bearing and distance of S 37°05′46.76″ W for a distance of 608.67 feet; thence run S 01°16′26.9″ W for a distance of 185.67 feet; then continue following the 50 foot right-of-way line of Hwy. 44 in a Southerly direction run S 00°17′16.91″ E for a distance of 919.44 feet; thence run S 00°30′20.96″ E for a distance of 1,673.63 feet back to the POINT OF BEGINNING.

"(2) Money derived in the lease of the real property described in subsection (1) shall be deposited into the State General Fund.

Laws of 2012, ch. 553, § 1 provides:

"SECTION 1. (1) After consultation with the chairmen of the Senate and House Public Property Committees, the Department of Finance and Administration, acting on behalf of the Mississippi Department of Human Services, is authorized to convey and transfer to the Board of Supervisors of Marion County, Mississippi, upon approval of the

Governor and the Secretary of State, certain real property and any improvements thereon, located at Columbia Training School, in Columbia, Marion County, Mississippi, containing approximately 214 acres located within the City of Columbia at the North East corner of the intersection of Highway 44 and National Guard Road being more particularly described as follows:

"Commencing at the southwest corner of Section 34, T4N, R18W, thence run N 00°37′10.95″ W for a distance of 973.09 feet; thence run N 89°29′39.93″ E for a distance of 43.53 feet to a point being 50 feet East of the center line of Hwy. 44; also being the POINT of BEGINNING of said parcel, thence run N 89°33′52.61″ E for a distance of 394.66 feet; thence run S 00°00′ E for a distance of 244.75 feet; thence run S 90°00′ E for a distance of 869.36 feet; thence run N 58°56′17.10″ E for a distance of 636.66 feet; thence run N 45°00′ E for a distance of 1,776.45 feet; thence run N 00°00′ E for a distance of 510.0 feet; thence run N 90°00′ W for a distance of 493.36 feet; thence run N 00°24′31.67″ E for a distance of 1,920.83 feet to a point on the South 50 foot right-of-way line of Hwy. 44; then follow the 50 foot right-of-way line of Hwy. 44 in a South-westerly direction. From said point thence run S 83°50′0.64″ W for a distance of 541.68 feet; thence run along a counter-clock-wise curve for an arc distance of 209.59 feet and having a radius of 1,450 feet and a chord bearing and distance of S 77°03′30.84″ W for a distance of 209.41 feet; thence run S 72°55′03.62″ W for a distance of 1,220.06 feet; thence run along a counter-clock-wise curve for an arc distance of 650.21 feet and having a radius of 520.0 feet and a chord bearing and distance of S 37°05′46.76″ W for a distance of 608.67 feet; thence run S 01°16′26.9″ W for a distance of 185.67 feet; then continue following the 50 foot right-of-way line of Hwy. 44 in a Southerly direction run S 00°17′16.91″ E for a distance of 919.44 feet; thence run S 00°30′20.96″ E for a distance of 1,673.63 feet back to the POINT of BEGINNING.

"(2) The State of Mississippi shall retain all mineral rights to the real property donated under this section."

Amendment Notes — The first 2010 amendment (ch. 526), effective from and after July 1, 2010, deleted (3) and (4), which dealt with use of the property and facilities of the Columbia Training School and possible transference and leasing to any political subdivision of the state.

The second 2010 amendment (ch. 554), effective from and after July 1, 2011, twice substituted "Oakley Youth Development Center" for "Oakley Training School" in (2); and deleted (3) and (4), which dealt with the usage of the property and facilities of the Columbia Training School.

The 2012 amendment added (3).

SERVICES AND CARE FOR CERTAIN CHILDREN AND YOUTH IN CUSTODY OF OR UNDER THE SUPERVISION OF THE DEPARTMENT OF HUMAN SERVICES

SEC.

§ 43-27-107. Qualifications of family protection specialists; status as state service employees; time-limited employee positions [Repealed effective July 1, 2015].

The Department of Human Services is authorized to set the qualifications necessary for all family protection specialists employed by the department, which shall at a minimum require that the applicant possess a baccalaureate

degree in social work from a college or university accredited by the Council on Social Work Education or Southern Association of Colleges and Schools, unless the person was licensed as a social worker before September 1, 1994, pursuant to Section 73-53-7, Mississippi Code of 1972.

The qualifications for employment of a family protection specialist at the senior, advanced and supervisory grades shall require, in addition to those required of a family protection specialist, state licensure as a social worker.

The department shall not be required to go through the State Personnel Board or use the qualifications set by the Personnel Board in employing any family protection specialists for the department. All family protection specialists employed by the department shall be state service employees from the date of their employment with the department; however, to carry out its responsibilities, the department may use any available federal funds to employ such additional family protection specialists as it can employ in time-limited positions. All social worker positions existing before July 1, 1998, will remain state service.

This section shall stand repealed on July 1, 2015.

SOURCES: Laws, 1994, ch. 649, § 20; Laws, 1998, ch. 330, § 1; Laws, 2000, ch. 301, § 14; Laws, 2000, ch. 565, § 1; Laws, 2006, ch. 600, § 7; Laws, 2009, ch. 364, § 2; Laws, 2010, ch. 461, § 2; Laws, 2012, ch. 470, § 7, eff from and after June 30, 2012.

Amendment Notes — The 2010 amendment substituted "repealed on July 1, 2012" for "repealed from and after July 1, 2010" in the last paragraph.

The 2012 amendment extended the repealer provision from "July 1, 2012" to "July 1, 2015" in the last paragraph.

§ 43-27-113. Law enforcement assistance in department investigations of child abuse or neglect.

JUDICIAL DECISIONS

1. Custodial interrogation.

Defendant's convictions for felonious child abuse were appropriate because her statements to a family protection specialist were admissible since defendant was not subjected to custodial interrogation. Defendant was questioned by the specialist, and not the law enforcement officers who accompanied her; during the questioning, defendant was not under arrest, she was in her own home and free to terminate the interview; and nothing in the testimony of defendant or the specialist indicated that defendant believed that she was going to jail rather than temporarily being detained. Clark v. State, 40 So. 3d 531 (Miss. 2010).

Defendant's convictions for felonious child abuse were appropriate because her statements to a family protection specialist were admissible since defendant was not subjected to custodial interrogation. Defendant was questioned by the specialist, and not the law enforcement officers who accompanied her; during the questioning, defendant was not under arrest, she was in her own home and free to terminate the interview; and nothing in the testimony of defendant or the specialist indicated that defendant believed that she was going to jail rather than temporarily being detained. Clark v. State, 40 So. 3d 531 (Miss. 2010).

AMER-I-CAN PILOT PROGRAM

SEC.
43-27-401. Amer-I-Can Program established; objectives; policies and procedures; funding.

§ 43-27-401. Amer-I-Can Program established; objectives; policies and procedures; funding.

(1) The Department of Human Services, Division of Youth Services, shall establish a pilot program to be known as the "Amer-I-Can Program." The program is designed for youths who have been committed to or are confined at the Oakley Youth Development Center. The objectives of this program are:

(a) To develop greater self-esteem, assume responsible attitudes and experience a restructuring of habits and conditioning processes;

(b) To develop an appreciation of family members and an understanding of the role family structure has in achieving successful living;

(c) To develop an understanding of the concept of community and collective responsibility;

(d) To develop a prowess in problem solving and decision making that will eliminate many of the difficulties that were encountered in past experiences;

(e) To develop skills in money management and financial stability, thus relieving pressures that have contributed to previous difficulties;

(f) To develop communication skills to better express thoughts and ideas while acquiring an understanding of and respect for the thoughts and ideas of others; and

(g) To acquire employment seeking and retention skills to improve chances of long-term, gainful employment.

(2) The Division of Youth Services shall develop policies and procedures to administer the program and shall choose which youths are eligible to participate in the program.

(3) The department may accept any funds, public or private, made available to it for the program.

SOURCES: Laws, 2001, ch. 580, § 1; Laws, 2005, ch. 471, § 8; Laws, 2010, ch. 554, § 8, eff from and after July 1, 2011.

Amendment Notes — The 2010 amendment, effective July 1, 2011, substituted "are confined at the Oakley Youth Development Center" for "are confined in Columbia or Oakley Training Schools" in the second sentence in the introductory paragraph in (1).

CHAPTER 33

Housing and Housing Authorities

Article 1.

Housing Authorities.

IN GENERAL

§ 43-33-1. Title; definitions.

Cross References — Governing authority of municipality authorized to enter into agreements and contracts with housing authority as defined in this section to provide extra police protection, see § 21-17-1.

§ 43-33-5. Housing authorities created.

ATTORNEY GENERAL OPINIONS

A full-time firefighter, like all other municipal officers and employees, is prohibited from being a commissioner of the municipal housing authority under Miss. Code Ann. § 43-33-7. The appointment of a spouse of a member of the board of aldermen as a commissioner of the municipal housing authority violates the Nepotism Statute, Miss. Code Ann. § 25-1-53, except that a person serving as commissioner prior to election of their spouse to the board of aldermen may be reappointed. Tucker, March 15, 2007, A.G. Op. #07-00130, 2007 Miss. AG LEXIS 103.

§ 43-33-7. Appointment, qualifications and tenure of commissioners.

ATTORNEY GENERAL OPINIONS

A full-time firefighter, like all other municipal officers and employees, is prohibited from being a commissioner of the municipal housing authority under Miss. Code Ann. § 43-33-7. The appointment of a spouse of a member of the board of aldermen as a commissioner of the municipal housing authority violates the Nepotism Statute, Miss. Code Ann. § 25-1-53, except that a person serving as commissioner prior to election of their spouse to the board of aldermen may be reappointed. Tucker, March 15, 2007, A.G. Op. #07-00130, 2007 Miss. AG LEXIS 103.

ARTICLE 11.

MISSISSIPPI HOME CORPORATION ACT.

§ 43-33-704. Mississippi Home Corporation created; vesting in corporation of functions, property, rights and powers of Mississippi Housing Finance Corporation; continuation of regulations; powers generally; qualifications, appointment and terms of members; vacancies; removal; officers; ex officio members; declaration of public purpose and legislative intent.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (3)(a). The letter "(a)" was deleted before the word "from." The Joint Committee ratified the correction at its July 22, 2010, meeting. Since the language of the section as it appears in the main volume is correct, it is not set out in the supplement.

§ 43-33-717. Powers of corporation.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (5)(b). The subparagraph designation "(iv)" was inserted after the semicolon following subparagraph (iii). The Joint Committee ratified the correction at its July 22, 2010, meeting. Since the language of the section as it appears in the main volume is correct, it is not set out in the supplement.

§ 43-33-767. Authorization to issue general obligation bonds; resolutions; use of earnings.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (2) by substituting "the general obligation bonds issued under subsection (1) of this section" for "the general obligation bonds issued under subsection (2) of this section." The Joint Committee ratified the correction at its July 22, 2010, meeting. Since the language of the section as it appears in the main volume is correct, it is not set out in the supplement.

CHAPTER 35

Urban Renewal and Redevelopment

ARTICLE 1.

URBAN RENEWAL.

§ 43-35-17. Eminent domain.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in a statutory reference in the second sentence of (a) by substituting "Chapter 27, Title 11, Mississippi Code of 1972" for "Chapter 33, Title 11, Mississippi Code of 1972." The Joint Committee ratified the correction at its July 22, 2010, meeting. Since the language of the section as it appears in the main volume is correct, it is not set out in the supplement.

§ 43-35-21. Issuance of bonds.

(a) A municipality shall have power to issue bonds from time to time, in its discretion, to finance the undertaking of any urban renewal project under this article, including, without limiting the generality thereof, the payment of principal and interest upon any advances for surveys and plans, and shall also have power to issue refunding bonds for the payment or retirement of such bonds previously issued by it. Such bonds shall be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the municipality derived from or held in connection with its undertaking and carrying out of urban renewal projects under this article. Payment of such bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant or contribution from the federal government or other source, in aid of any urban renewal projects of the municipality under this article, and by a mortgage of any such urban renewal projects, or any part thereof title to which is in the municipality.

(b) Bonds issued under this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance or sale of bonds. Bonds issued under the provisions of this article are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempted from all taxes.

(c) Bonds issued under this section shall be authorized by resolution or ordinance of the local governing body and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, not to exceed thirty (30) years from date of issue, bear interest at such rate or rates, not exceeding that allowed in Section 75-17-103, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics, as may be provided by such resolution or trust indenture or mortgage issued pursuant thereto. Any bond issue to be awarded and sold to the United States of America or any agency thereof shall mature at such time or times, not to exceed thirty-five (35) years, as shall be prescribed in the ordinance authorizing their issuance.

(d) Such bonds may be sold at not less than par at public sales held after notice published prior to such sale in a newspaper having a general circulation in the area of operation and in such other medium of publication as the municipality may determine, may be exchanged for other bonds on the basis of par or may be sold at private sale under such terms and conditions as may be determined from time to time by the municipality. Such bonds may be sold to the federal government at private sale at not less than par, and, in the event less than all of the authorized principal amount of such bonds is sold to the federal government, the balance may be sold at private sale at not less than par at an interest cost to the municipality of not to exceed the interest cost to the municipality of the portion of the bonds sold to the federal government.

(e) In case any of the public officials of the municipality whose signatures appear on any bonds or coupons issued under this article shall cease to be such officials before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such officials had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this article shall be fully negotiable.

(f) In any suit, action or proceeding involving the validity or enforceability of any bond issued under this article, or the security therefor, any such bond reciting in substance that it has been issued by the municipality in connection with an urban renewal project, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located and carried out in accordance with the provisions of this article.

SOURCES: Codes, 1942, § 7342-10; Laws, 1958, ch. 518, § 10; Laws, 1974, ch. 358, § 1; Laws, 1980, ch. 434; Laws, 1981, ch. 520, § 1; Laws, 1982, ch. 434, § 23; Laws, 1983, ch. 541, § 28; Laws, 2011, ch. 455, § 1, eff from and after passage (approved Mar. 29, 2011.)

Amendment Notes — The 2011 amendment added "or may be sold at private sale under such terms and conditions as may be determined from time to time by the municipality" at the end of the first sentence in (d).

ARTICLE 9.

COMMUNITY DEVELOPMENT.

SEC.

§ 43-35-504. Block grants for improvements to existing public water systems; viability requirement and determination; viability exceptions.

(1)(a) Except as provided in subsections (2) and (3) of this section, the Executive Director of the Mississippi Development Authority shall not

award a community development block grant to any county or municipality for the purpose of making improvements, including expansions, rehabilitation or repair, to an existing public water system, unless that system is determined to be viable. The Mississippi Development Authority may require any applicant for which a determination of viability is required under this section to submit information deemed necessary by the executive director for that determination. A preliminary determination of viability shall be made by the Executive Director of the Mississippi Development Authority following receipt of a written recommendation on viability from the State Health Officer and the Executive Director of the Public Utilities Staff. The recommendation of the State Health Officer and the Executive Director of the Public Utilities Staff shall be based on information received from the Mississippi Development Authority and any other information available to the State Department of Health or Public Utilities Staff, as applicable. The State Department of Health and the Public Utilities Staff shall assist the Mississippi Development Authority in developing appropriate forms as required for implementation of this section.

(b) Within five (5) days following a preliminary determination that a public water system is not viable by the Executive Director of the Mississippi Development Authority, the executive director shall provide written notice by certified mail, return receipt requested to the owner or president of the board of the system and the governing authority of the applicant. The notice shall contain the reasons for the determination of nonviability. The owner or president of the board of the system may appeal the preliminary determination to the Executive Director of the Mississippi Development Authority, who shall make a final determination.

(2) The Executive Director of the Mississippi Development Authority may award a community development block grant to any county or municipality for the purpose of making improvements, including expansions, rehabilitation or repair, to an existing public water system, if after receipt of a written recommendation from the State Health Officer and the Executive Director of the Public Utilities Staff, the Executive Director of the Mississippi Development Authority makes a final determination that the public water system may become viable as the result of the grant award. The Executive Director of the Mississippi Development Authority may also award a grant if an extreme emergency exists. In making a grant award, the Executive Director of the Mississippi Development Authority may impose any conditions on the grant deemed necessary after consultation with the State Health Officer and the Executive Director of the Public Utilities Staff, including, but not limited to, interconnection with another existing system or satellite or contract management.

(3) A determination of viability shall not be required for the award of grants relating to a portable water supply necessary for the operation of a municipal sewage treatment system.

SOURCES: Laws, 1998, ch. 500, § 1; Laws, 2000, ch. 349, § 1; Laws, 2001, ch. 371, § 1; reenacted and amended, Laws, 2002, ch. 422, § 1; Laws, 2010, ch. 359, § 1, eff from and after passage (approved Mar. 15, 2010.)

Amendment Notes — The 2010 amendment substituted "subsections (2) and (3) of this section" for "subsection (2) of this section" in the first sentence in (1)(a); and added (3).

CHAPTER 37

Acquisition of Real Property Using Public Funds

§ 43-37-3. Acquisition of real property in publicly funded projects.

ATTORNEY GENERAL OPINIONS

There is no authority for a county to pay delinquent land taxes or to bid on or purchase real property at a county tax sale. Hudson, February 9, 2007, A.G. Op. #07-00038, 2007 Miss. AG LEXIS 19.

CHAPTER 39

Relocation Assistance

§ 43-39-13. Relocation assistance advisory programs.

Editor's Note — The "Mississippi Vulnerable Adult Act," referred to in this section, was renamed the "Vulnerable Persons Act" by Laws of 2010, ch. 357. See § 43-47-1.

CHAPTER 47

Mississippi Vulnerable Persons Act

SEC.

§ 43-47-1. Short title.

This chapter shall be known and may be cited as the "Mississippi Vulnerable Persons Act of 1986."

SOURCES: Laws, 1986, ch. 468, § 1; reenacted, Laws, 1989, ch. 381, § 1; Laws, 2010, ch. 357, § 1, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment substituted "Persons" for "Adults."
Cross References — Kidnapping vulnerable person, see § 97-3-53.

§ 43-47-3. Legislative purpose.

The purpose of this chapter is to provide for protective services for vulnerable persons in Mississippi who are abused, neglected or exploited.

SOURCES: Laws, 1986, ch. 468, § 2; reenacted, Laws, 1989, ch. 381, § 2; Laws, 2010, ch. 357, § 2, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment substituted "persons" for "adults."

§ 43-47-5. Definitions.

For the purposes of this chapter, the following words shall have the meanings ascribed herein unless the context otherwise requires:

(a) "Abuse" means the commission of a willful act, or the willful omission of the performance of a duty, which act or omission contributes, tends to contribute to, or results in the infliction of physical pain, injury or mental anguish on or to a vulnerable person, the unreasonable confinement of a vulnerable person, or the willful deprivation by a caretaker of services which are necessary to maintain the mental or physical health of a vulnerable person. "Abuse" includes the sexual abuse delineated in Section 43-47-18. "Abuse" does not mean conduct that is a part of the treatment and care of, and in furtherance of the health and safety of, a patient or resident

of a care facility, nor shall it mean a normal caregiving action or appropriate display of affection. "Abuse" includes, but is not limited to, a single incident.

(b) "Care facility" means:

(i) Any institution or place for the aged or infirm as defined in, and required to be licensed under, the provisions of Section 43-11-1 et seq.;

(ii) Any long-term care facility as defined in Section 43-7-55;

(iii) Any hospital as defined in, and required to be licensed under, the provisions of Section 41-9-1 et seq.;

(iv) Any home health agency as defined in, and required to be licensed under, the provisions of Section 41-71-1 et seq.;

(v) Any hospice as defined in, and required to be licensed under, the provisions of Chapter 85 of Title 41; and

(vi) Any adult day services facility, which means a community-based group program for adults designed to meet the needs of adults with impairments through individual plans of care, which are structured, comprehensive, planned, nonresidential programs providing a variety of health, social and related support services in a protective setting, enabling participants to live in the community. Exempted from this definition shall be any program licensed and certified by the Mississippi Department of Mental Health and any adult day services program provided to ten (10) or fewer individuals by a licensed institution for the aged or infirm.

(c) "Caretaker" means an individual, corporation, partnership or other organization which has assumed the responsibility for the care of a vulnerable person, but shall not include the Division of Medicaid, a licensed hospital, or a licensed nursing home within the state.

(d) "Court" means the chancery court of the county in which the vulnerable person resides or is located.

(e) "Department" means the Department of Human Services.

(f) "Emergency" means a situation in which:

(i) A vulnerable person is in substantial danger of serious harm, death or irreparable harm if protective services are not provided immediately;

(ii) The vulnerable person is unable to consent to services;

(iii) No responsible, able or willing caretaker, if any, is available to consent to emergency services; and

(iv) There is insufficient time to utilize the procedure provided in Section 43-47-13.

(g) "Emergency services" means those services necessary to maintain a vulnerable person's vital functions and without which there is reasonable belief that the vulnerable person would suffer irreparable harm or death, and may include taking physical custody of the person.

(h) "Essential services" means those social work, medical, psychiatric or legal services necessary to safeguard a vulnerable person's rights and resources and to maintain the physical or mental well-being of the person. These services shall include, but not be limited to, the provision of medical care for physical and mental health needs, assistance in personal hygiene,

food, clothing, adequately heated and ventilated shelter, protection from health and safety hazards, protection from physical mistreatment and protection from exploitation. The words "essential services" shall not include taking a vulnerable person into physical custody without his consent, except as provided for in Section 43-47-15 and as otherwise provided by the general laws of the state.

(i) "Exploitation" means the illegal or improper use of a vulnerable person or his resources for another's profit, advantage or unjust enrichment, with or without the consent of the vulnerable person, and may include actions taken pursuant to a power of attorney. "Exploitation" includes, but is not limited to, a single incident.

(j) "Illegal use" means any action defined under Mississippi law as a criminal act.

(k) "Improper use" means any use without the consent of the vulnerable person, any use with the consent of the vulnerable person if the consent is obtained by undue means, or any use that deprives the vulnerable person of his ability to obtain essential services or a lifestyle to which the vulnerable person has become accustomed and could have otherwise afforded.

(*l*) "Lacks the capacity to consent" means that a vulnerable person, because of physical or mental incapacity, lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person, including, but not limited to, provisions for health care, food, clothing or shelter. This may be reasonably determined by the department in emergency situations; in all other instances, the court shall make the determination following the procedures in Sections 43-47-13 and 43-47-15 or as otherwise provided by the general laws of the state.

(m) "Neglect" means either the inability of a vulnerable person who is living alone to provide for himself the food, clothing, shelter, health care or other services which are necessary to maintain his mental or physical health, or failure of a caretaker to supply the vulnerable person with the food, clothing, shelter, health care, supervision or other services which a reasonably prudent person would do to maintain the vulnerable person's mental and physical health. "Neglect" includes, but is not limited to, a single incident.

(n) "Protective services" means services provided by the state or other government or private organizations, agencies or individuals which are necessary to protect a vulnerable person from abuse, neglect or exploitation. They shall include, but not be limited to, investigation, evaluation of the need for services and provision of essential services on behalf of a vulnerable person.

(o) "Sexual penetration" shall have the meaning ascribed in Section 97-3-97.

(p) "Undue means" means the use of deceit, power, or persuasion over a vulnerable person resulting in the vulnerable person being influenced to act otherwise than by his own free will or without adequate attention to the consequences.

(q) "Vulnerable person" means a person, whether a minor or adult, whose ability to perform the normal activities of daily living or to provide for his or her own care or protection from abuse, neglect, exploitation or improper sexual contact is impaired due to a mental, emotional, physical or developmental disability or dysfunction, or brain damage or the infirmities of aging. The term "vulnerable person" also includes all residents or patients, regardless of age, in a care facility. The department shall not be prohibited from investigating, and shall have the authority and responsibility to fully investigate, in accordance with the provisions of this chapter, any allegation of abuse, neglect or exploitation regarding a patient in a care facility, if the alleged abuse, neglect or exploitation occurred at a private residence.

SOURCES: Laws, 1986, ch. 468, § 3; reenacted, Laws, 1989, ch. 381, § 3; Laws, 1990, ch. 493, § 1; Laws, 1991, ch. 431 § 1; Laws, 1998, ch. 354, § 1; Laws, 2001, ch. 603, § 1; Laws, 2003, ch. 558, § 1; Laws, 2006, ch. 328, § 1; Laws, 2010, ch. 357, § 3; Laws, 2012, ch. 439, § 1, eff from and after July 1, 2012.

Amendment Notes — The 2010 amendment, throughout the section, substituted "vulnerable person" for "vulnerable adult," or similar language; and in (g), substituted "person" for "adult" at the end.

The 2012 amendment in the first sentence in (a) substituted "commission of a willful act, or the willful act, or the willful omission of the performance of a duty, which act or omission contributes, tends to contribute to, or results in the" for "the willful or nonaccidental," inserted "or to" after "mental anguish on," and subsituted "mental or physical" for "mental and physical" and in the third sentence, substituted "does not mean conduct that" for "shall not mean conduct which"; in (i), inserted "or unjust enrichment" preceding "with or without the consent of the vulnerable person, and", substituted "may include actions taken" for "includes acts committed" thereafter in the first sentence; added (j), (k) and (p); deleted "for the purposes of Sections 43-47-19 and 43-47-37 only" from the end of the second sentence in (q); and made minor stylistic changes throughout.

Cross References — Kidnapping vulnerable person, see § 97-3-53.

JUDICIAL DECISIONS

1. Indictment.

It was improper to convict defendant of using her mother's money without her consent in violation of the Mississippi Vulnerable Adults Act of 1986, Miss. Code Ann. § 43-47-19 because although the indictment sufficiently informed defendant of the crime and the conduct the grand jury believed constituted the crime, the trial court erroneously issued a jury instruction that materially conflicted with the indictment's language; the wording of the indictment suggested that the grand jury believed defendant's use of the money was improper only if the money was used without the mother's consent, but at trial, the State produced no evidence that defendant had used her mother's money without her consent, and several witnesses testified that she, in fact, had obtained her mother's consent. Decker v. State, — So. 2d —, 2011 Miss. LEXIS 296 (Miss. June 16, 2011), opinion withdrawn by 2011 Miss. LEXIS 324 (Miss. June 30, 2011).

§ 43-47-7. Reporting abuse, neglect, or exploitation; establishment of central register; confidentiality.

(1)(a) Except as otherwise provided by Section 43-47-37 for vulnerable persons in care facilities, any person including, but not limited to, the following, who knows or suspects that a vulnerable person has been or is being abused, neglected or exploited shall immediately report such knowledge or suspicion to the Department of Human Services or to the county department of human services where the vulnerable person is located:

(i) Attorney, physician, osteopathic physician, medical examiner, chiropractor or nurse engaged in the admission, examination, care or treatment of vulnerable persons;

(ii) Health professional or mental health professional other than one listed in subparagraph (i);

(iii) Practitioner who relies solely on spiritual means for healing;

(iv) Social worker, family protection worker, family protection specialist or other professional care, residential or institutional staff;

(v) State, county or municipal criminal justice employee or law enforcement officer;

(vi) Human rights advocacy committee or long-term care ombudsman council member; or

(vii) Accountant, stockbroker, financial advisor or consultant, insurance agent or consultant, investment advisor or consultant, financial planner, or any officer or employee of a bank, savings and loan, credit union or any other financial service provider.

(b) To the extent possible, a report made pursuant to paragraph (a) must contain, but need not be limited to, the following information:

(i) Name, age, race, sex, physical description and location of each vulnerable person alleged to have been abused, neglected or exploited.

(ii) Names, addresses and telephone numbers of the vulnerable person's family members.

(iii) Name, address and telephone number of each alleged perpetrator.

(iv) Name, address and telephone number of the caregiver of the vulnerable person, if different from the alleged perpetrator.

(v) Description of the neglect, exploitation, physical or psychological injuries sustained.

(vi) Actions taken by the reporter, if any, such as notification of the criminal justice agency.

(vii) Any other information available to the reporting person which may establish the cause of abuse, neglect or exploitation that occurred or is occurring.

In addition to the above, any person or entity holding or required to hold a license as specified in Title 73, Professions and Vocations, Mississippi Code of 1972, shall be required to give his, her or its name, address and telephone number in the report of the alleged abuse, neglect or exploitation.

(c) The department, or its designees, shall report to an appropriate criminal investigative or prosecutive authority any person required by this section to report or who fails to comply with this section. A person who fails to make a report as required under this subsection or who, because of the circumstances, should have known or suspected beyond a reasonable doubt that a vulnerable person suffers from exploitation, abuse, neglect or self-neglect but who knowingly fails to comply with this section shall, upon conviction, be guilty of a misdemeanor and shall be punished by a fine not exceeding Five Thousand Dollars ($5,000.00), or by imprisonment in the county jail for not more than six (6) months, or both such fine and imprisonment. However, for purposes of this subsection (1), any recognized legal financial transaction shall not be considered cause to report the knowledge or suspicion of the financial exploitation of a vulnerable person. If a person convicted under this section is a member of a profession or occupation that is licensed, certified or regulated by the state, the court shall notify the appropriate licensing, certifying or regulating entity of the conviction.

(2) Reports received by law enforcement authorities or other agencies shall be forwarded immediately to the Department of Human Services or the county department of human services. The Department of Human Services shall investigate the reported abuse, neglect or exploitation immediately and shall file a preliminary report of its findings with the Office of the Attorney General within forty-eight (48) hours if immediate attention is needed, or seventy-two (72) hours if the vulnerable person is not in immediate danger and shall make additional reports as new information or evidence becomes available. The Department of Human Services, upon request, shall forward a statement to the person making the initial report required by this section as to what action is being taken, if any.

(3) The report may be made orally or in writing, but where made orally, it shall be followed up by a written report. A person who fails to report or to otherwise comply with this section, as provided herein, shall have no civil or criminal liability, other than that expressly provided for in this section, to any person or entity in connection with any failure to report or to otherwise comply with the requirements of this section.

(4) Anyone who makes a report required by this section or who testifies or participates in any judicial proceedings arising from the report or who participates in a required investigation or evaluation shall be presumed to be acting in good faith and in so doing shall be immune from liability, civil or criminal, that might otherwise be incurred or imposed. However, the immunity provided under this subsection shall not apply to any suspect or perpetrator of any abuse, neglect or exploitation.

(5) A person who intentionally makes a false report under the provisions of this section may be found liable in a civil suit for any actual damages suffered by the person or persons so reported and for any punitive damages set by the court or jury.

(6) The Executive Director of the Department of Human Services shall establish a statewide central register of reports made pursuant to this section.

The central register shall be capable of receiving reports of vulnerable persons in need of protective services seven (7) days a week, twenty-four (24) hours a day. To effectuate this purpose, the executive director shall establish a single toll-free statewide phone number that all persons may use to report vulnerable persons in need of protective services, and that all persons authorized by subsection (7) of this section may use for determining the existence of prior reports in order to evaluate the condition or circumstances of the vulnerable person before them. Such oral reports and evidence of previous reports shall be transmitted to the appropriate county department of human services. The central register shall include, but not be limited to, the following information: the name and identifying information of the individual reported, the county department of human services responsible for the investigation of each such report, the names, affiliations and purposes of any person requesting or receiving information which the executive director believes might be helpful in the furtherance of the purposes of this chapter, the name, address, birth date, social security number of the perpetrator of abuse, neglect and/or exploitation, and the type of abuse, neglect and/or exploitation of which there was substantial evidence upon investigation of the report. The central register shall inform the person making reports required under this section of his or her right to request statements from the department as to what action is being taken, if any.

Each person, business, organization or other entity, whether public or private, operated for profit, operated for nonprofit or a voluntary unit of government not responsible for law enforcement providing care, supervision or treatment of vulnerable persons shall conduct criminal history records checks on each new employee of the entity who provides, and/or would provide direct patient care or services to adults or vulnerable persons, as provided in Section 43-11-13.

The department shall not release data that would be harmful or detrimental to the vulnerable person or that would identify or locate a person who, in good faith, made a report or cooperated in a subsequent investigation unless ordered to do so by a court of competent jurisdiction.

(7) Reports made pursuant to this section, reports written or photographs taken concerning such reports in the possession of the Department of Human Services or the county department of human services shall be confidential and shall only be made available to:

(a) A physician who has before him a vulnerable person whom he reasonably suspects may be abused, neglected or exploited, as defined in Section 43-47-5;

(b) A duly authorized agency having the responsibility for the care or supervision of a subject of the report;

(c) A grand jury or a court of competent jurisdiction, upon finding that the information in the record is necessary for the determination of charges before the grand jury;

(d) A district attorney or other law enforcement official.

Notwithstanding the provisions of paragraph (b) of this subsection, the department may not disclose a report of the abandonment, exploitation, abuse,

neglect or self-neglect of a vulnerable person to the vulnerable person's guardian, attorney-in-fact, surrogate decision maker, or caregiver who is a perpetrator or alleged perpetrator of the abandonment, exploitation, abuse or neglect of the vulnerable person.

Any person given access to the names or other information identifying the subject of the report, except the subject of the report, shall not divulge or make public such identifying information unless he is a district attorney or other law enforcement official and the purpose is to initiate court action. Any person who willfully permits the release of any data or information obtained pursuant to this section to persons or agencies not permitted to such access by this section shall be guilty of a misdemeanor.

(8) Upon reasonable cause to believe that a caretaker or other person has abused, neglected or exploited a vulnerable person, the department shall promptly notify the district attorney of the county in which the vulnerable person is located and the Office of the Attorney General, except as provided in Section 43-47-37(2).

SOURCES: Laws, 1986, ch. 468, § 4; reenacted, Laws, 1989, ch. 381, § 4; Laws, 1990, ch. 493, § 3; Laws, 1991, ch. 431 § 2; Laws, 1996, ch. 351, § 2; Laws, 2001, ch. 603, § 2; Laws, 2004, ch. 489, § 7; Laws, 2006, ch. 600, § 9; Laws, 2009, ch. 468, § 1; Laws, 2010, ch. 357, § 4, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment, throughout the section, substituted "vulnerable persons" for "vulnerable adults," or similar language; and in (1)(a)(iv), deleted "adult" following "professional."

§ 43-47-9. Investigations and evaluations; cooperation of physicians and other health and welfare personnel; contracts with agencies and private physicians.

(1) Upon receipt of a report pursuant to Section 43-47-7 that a vulnerable person is in need of protective services, the department shall initiate an investigation and/or evaluation within forty-eight (48) hours if immediate attention is needed, or within seventy-two (72) hours if the vulnerable person is not in immediate danger, to determine whether the vulnerable person is in need of protective services and what services are needed. The evaluation shall include any necessary visits and interviews with the person, and if appropriate, with the alleged perpetrator of the vulnerable person abuse and with any person believed to have knowledge of the circumstances of the case. When a caretaker of a vulnerable person refuses to allow the department reasonable access to conduct an investigation to determine if the vulnerable person is in need of protective services, the department may petition the court for an order for injunctive relief enjoining the caretaker from interfering with the investigation.

(2) The staff and physicians of local health departments, mental health clinics and other public or private agencies, including law enforcement agencies, shall cooperate fully with the department in the performance of its duties. These duties include immediate, in-residence evaluations and medical

examinations and treatment where the department deems it necessary. However, upon receipt of a report of abuse, neglect or exploitation of a vulnerable person confined in a licensed hospital or licensed nursing home facility in the state, the department shall immediately refer this report to the proper authority at the State Department of Health for investigation under Section 43-47-37.

Upon a showing of probable cause that a vulnerable person has been abused, a court may authorize a qualified third party to make an evaluation to enter the residence of, and to examine the vulnerable person. Upon a showing of probable cause that a vulnerable person has been financially exploited, a court may authorize a qualified third party, also authorized by the department, to make an evaluation, and to gain access to the financial records of the vulnerable person.

(3) The department may contract with an agency or private physician for the purpose of providing immediate, accessible evaluations in the location that the department deems most appropriate.

SOURCES: Laws, 1986, ch. 468, § 5; reenacted, Laws, 1989, ch. 381, § 5; Laws, 1990, ch. 493, § 4; Laws, 1991, ch. 431 § 3; Laws, 2001, ch. 603, § 3; Laws, 2010, ch. 357, § 5, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment, throughout the section, substituted "vulnerable person" for "vulnerable adult"; and in (1), in the first sentence, inserted "if immediate attention is needed, or within seventy-two (72) hours if the vulnerable person is not in immediate danger," and in the second sentence, substituted "person" for "adult."

§ 43-47-11. Protective services plans; interference by caretaker; effect of lack of consent by vulnerable person.

(1) If, pursuant to an investigation instituted pursuant to Section 43-47-7, the department determines that a vulnerable person is in need of protective services, it shall prepare a plan of services, reviewing that plan with the vulnerable person and obtaining his consent in writing.

(2) When a caretaker of a vulnerable person who consents to the receipt of protective services refuses to allow the provision of such services to the vulnerable person, the department may petition the court for an order for injunctive relief enjoining the caretaker from interfering with the provision of protective services to the vulnerable person.

(3) If a vulnerable person does not consent to the receipt of protective services, or if he withdraws his consent, the services shall not be provided, except as indicated in Section 43-47-13.

SOURCES: Laws, 1986, ch. 468, § 6; reenacted, Laws, 1989, ch. 381, § 6; Laws, 1990, ch. 493, § 5; Laws, 2010, ch. 357, § 6, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment substituted "vulnerable person" for "vulnerable adult" throughout the section.

§ 43-47-13. Provision of services to vulnerable person lacking capacity to consent; petition for injunctive relief, hearing, and order; appointment of guardian or conservator.

(1) Every reasonable effort shall be made to secure the consent and participation of the vulnerable person in an evaluation and resolution of the need for protective services. If those efforts fail and if the department has reasonable cause to believe that a vulnerable person is being abused, neglected or exploited and lacks the capacity to consent to protective services, then the department may petition the court for an order for injunctive relief authorizing the provision of protective services. The petition must allege specific facts sufficient to show that the vulnerable person is in need of protective services and lacks the capacity to consent to them.

(2) The court shall set the case for hearing within fourteen (14) days after the filing of the petition. The vulnerable person must receive at least five (5) days notice of the hearing. Where good cause is shown, the court may direct that a shorter notice be given. The vulnerable person has the right to be present and represented by counsel at the hearing. If the person, in the determination of the court, lacks the capacity to waive the right to counsel, then the court shall appoint a guardian ad litem. If the person is indigent, the cost of representation shall be borne by the department or by the court.

(3) If, at the hearing, the court finds by clear and convincing evidence that the vulnerable person is in need of protective services and lacks the capacity to consent to those services, the court may issue an order relative thereto. This order may include the designation of an individual, organization or agency to be responsible for the performing or obtaining of essential services on behalf of the vulnerable person or otherwise consenting to protective services in his behalf. The order may provide for protective services for a period not to exceed eighteen (18) months, at which time the vulnerable person's need for protective services may be reviewed by the department filing a petition requesting such review with the court. Should the court determine that the vulnerable person is in further need of protective services, it may order the provision of such protective services as provided herein.

(4) The court may appoint a guardian or conservator for the vulnerable person, but the court shall not appoint the department as a guardian of the vulnerable person. No vulnerable person may be committed to a mental health facility under this chapter. However, nothing contained herein shall prohibit the filing of petitions under other applicable provisions of the laws of this state.

SOURCES: Laws, 1986, ch. 468, § 7; reenacted, Laws, 1989, ch. 381, § 7; Laws, 2010, ch. 357, § 7, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment substituted "vulnerable person" for "vulnerable adult" throughout the section.

§ 43-47-15. Provision of services to alleviate an imminent danger; entry upon premises pursuant to court order; immunity from liability of petitioner acting in good faith.

(1) The department shall have the authority to provide immediate medical care, food, clothing, heat, shelter, supervision or other essential services in the absence of consent if it is determined that:

(a) The vulnerable person is in imminent danger of death or irreparable harm;

(b) Provision of emergency and/or protective services will alleviate the endangerment; and

(c) No other statutory or otherwise appropriate remedy is immediately available.

(2) Within forty-eight (48) hours, excluding Saturdays, Sundays and legal holidays, the department shall petition the court for an order for injunctive relief authorizing the provision of emergency services.

(3) Upon petition of the Commissioner of Public Welfare, the court may order the provision of emergency services to a vulnerable person after finding that there is reasonable cause to believe that:

(a) The vulnerable person lacks the capacity to consent and that he is in need of protective services;

(b) An emergency exists; and

(c) No other person authorized by law or order to give consent is available and willing to arrange for emergency services.

If there is reasonable cause to believe that the conditions listed above exist and no other custodian is available, then upon a written petition for emergency services filed by the department, the court may issue an order for injunctive relief for the department to provide emergency services to a vulnerable person.

(4) The petition for emergency services shall set forth the name, address and authority of the petitioners; the name, age and residence of the vulnerable person; the nature of the emergency; the proposed emergency services; the petitioner's reasonable belief as to the existence of the conditions set forth in subsection (1) of this section; and facts showing petitioner's attempts to obtain the vulnerable person's consent to the services.

(5) If the provision of emergency and/or protective services alleviates the imminent danger of death or irreparable harm and the department has reasonable cause to believe that the vulnerable person remains in need of protective services, the department shall proceed according to Sections 43-47-11 and 43-47-13.

(6) Where it is necessary to enter a premises without the vulnerable person's consent after obtaining a court order in compliance with subsection (3) of this section, the representative of the petitioner shall do so.

(7) No petitioner shall be held liable in any action brought by the vulnerable person if the petitioner acted in good faith.

SOURCES: Laws, 1986, ch. 468, § 8; reenacted, Laws, 1989, ch. 381, § 8; Laws, 2010, ch. 357, § 8, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment substituted "vulnerable person" for "vulnerable adult," or similar language throughout the section.

§ 43-47-17. Right to bring motion for review of order.

Notwithstanding any finding by the court of lack of capacity of the vulnerable person to consent, the vulnerable person or the individual, organization or agency designated to be responsible for the vulnerable person, if any, or the State Department of Public Welfare or the county welfare department, shall have the right to bring a motion in the cause for review of any order pursuant to this chapter.

SOURCES: Laws, 1986, ch. 468, § 9; reenacted, Laws, 1989, ch. 381, § 9; Laws, 2010, ch. 357, § 9, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment substituted "vulnerable person" for "vulnerable adult" throughout the section.

§ 43-47-18. Sexual battery or fondling of vulnerable person by health care employees or persons in position of trust or authority; penalties.

(1)(a) A person who engages in sexual penetration with a vulnerable person is guilty of sexual battery if the person is a volunteer at, or an employee of, or contracted to work for, a health care facility in which the vulnerable person is a patient or resident.

(b) A person who engages in sexual penetration with a vulnerable person is guilty of sexual battery if the person is in a position of trust or authority over the vulnerable person, including, without limitation, the vulnerable person's teacher, counselor, physician, psychiatrist, psychologist, nurse, certified nursing assistant, direct care worker, technical assistant, minister, priest, physical therapist, chiropractor, legal guardian, parent, stepparent, other relative, caretaker or conservator.

(c) Every person who is convicted of sexual battery under this subsection (1) shall be imprisoned in the custody of the State Department of Corrections for a period of not more than thirty (30) years, and for a second or subsequent such offense shall be imprisoned in the custody of the State Department of Corrections for a period of not more than forty (40) years.

(2)(a) Any person who, for the purpose of gratifying the person's lust, or indulging the person's depraved licentious sexual desires, shall handle, touch or rub with hands or any part of the person's body or any member thereof, any vulnerable person, with or without the vulnerable person's consent, when the person is a volunteer at, or an employee of, or contracted to work for, a health care facility in which the vulnerable person is a patient or resident, shall be guilty of a felony and, upon conviction thereof, shall be fined in a sum not less than One Thousand Dollars ($1,000.00) nor more than Five Thousand Dollars ($5,000.00), or be committed to the custody of the Department of Corrections not less than two (2) nor more than fifteen

(15) years, or be punished by both fine and imprisonment, at the discretion of the court.

(b) Any person who, for the purpose of gratifying the person's lust, or indulging the person's depraved licentious sexual desires, shall handle, touch or rub with hands or any part of the person's body or any member thereof, any vulnerable person, with or without the vulnerable person's consent, when the person occupies a position of trust or authority over the vulnerable person, shall be guilty of a felony and, upon conviction thereof, shall be fined in a sum not less than One Thousand Dollars ($1,000.00) nor more than Five Thousand Dollars ($5,000.00), or be committed to the custody of the Department of Corrections not less than two (2) nor more than fifteen (15) years, or be punished by both fine and imprisonment, at the discretion of the court. A person in a position of trust or authority over a vulnerable person includes, without limitation, the vulnerable person's teacher, counselor, physician, psychiatrist, psychologist, nurse, certified nursing assistant, direct care worker, technical assistant, minister, priest, physical therapist, chiropractor, legal guardian, parent, stepparent, other relative, caretaker or conservator.

(3) A person is not guilty of any offense under this section if the alleged victim is that person's legal spouse; however, the legal spouse of the alleged victim may be found guilty of sexual battery if the legal spouse engaged in forcible sexual penetration without the consent of the alleged victim.

SOURCES: Laws, 2006, ch. 328, § 2; Laws, 2010, ch. 357, § 10, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment substituted "vulnerable person" for "vulnerable adult," or similar language throughout the section.

§ 43-47-19. Prohibition against abuse, neglect, or exploitation; penalties; relation to other laws.

(1) It shall be unlawful for any person to abuse, neglect or exploit any vulnerable person.

(2)(a) Any person who willfully commits an act or willfully omits the performance of any duty, which act or omission contributes to, tends to contribute to, or results in neglect, physical pain, injury, mental anguish, unreasonable confinement or deprivation of services which are necessary to maintain the mental or physical health of a vulnerable person, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed One Thousand Dollars ($1,000.00) or by imprisonment not to exceed one (1) year in the county jail, or by both such fine and imprisonment. Any accepted medical procedure performed in the usual scope of practice shall not be a violation of this subsection.

(b) Any person who willfully exploits a vulnerable person, where the value of the exploitation is less than Two Hundred Fifty Dollars ($250.00), shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed Five Thousand Dollars ($5,000.00) or by

imprisonment not to exceed one (1) year in the county jail, or by both such fine and imprisonment; where the value of the exploitation is Two Hundred Fifty Dollars ($250.00) or more, the person who exploits a vulnerable person shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment in the custody of the Department of Corrections for not more than ten (10) years.

(3) Any person who willfully inflicts physical pain or injury upon a vulnerable person shall be guilty of felonious abuse or battery, or both, of a vulnerable person and, upon conviction thereof, may be punished by imprisonment in the State Penitentiary for not more than twenty (20) years.

(4) For any third or subsequent misdemeanor conviction of any person violating any part of this section, the offenses being committed within a period of five (5) years, such person shall be guilty of a felony and shall be sentenced to not less than one (1) year nor more than five (5) years in the custody of the Department of Corrections and shall be fined not less than Two Thousand Dollars ($2,000.00) nor more than Five Thousand Dollars ($5,000.00).

(5) Nothing contained in this section shall prevent proceedings against a person under any statute of this state or municipal ordinance defining any act as a crime or misdemeanor.

SOURCES: Laws, 1986, ch. 468, § 10; reenacted, Laws, 1989, ch. 381, § 10; Laws, 1990, ch. 493, § 6; Laws, 2001, ch. 603, § 4; Laws, 2003, ch. 558, § 2; Laws, 2010, ch. 357, § 11; Laws, 2011, ch. 365, § 1; Laws, 2012, ch. 439, § 2, eff from and after July 1, 2012.

Amendment Notes — The 2010 amendment substituted "vulnerable person" for "vulnerable adult" in (1) through (3).

The 2011 amendment added (4).

The 2012 amendment in (2)(a), inserted "neglect" preceding "physical pain, injury, mental anguish," substituted "mental or physical health" for "mental and physical health" and deleted "or neglect" following "physical health of a vulnerable person" in the first sentence.

Cross References — Imposition and collection of separate laboratory analysis fee in addition to any other assessments and costs imposed by statute on every individual convicted of a felony in a case where Crime Laboratory provided forensic science or laboratory services in connection with the case, see § 45-1-29.

JUDICIAL DECISIONS

3. Jury instruction.
4. Double jeopardy.

3. Jury instruction.

It was improper to convict defendant of using her mother's money without her consent in violation of the Mississippi Vulnerable Adults Act of 1986, Miss. Code Ann. § 43-47-19 because although the indictment sufficiently informed defendant of the crime and the conduct the grand jury believed constituted the crime, the trial court erroneously issued a jury instruction that materially conflicted with the indictment's language; the wording of the indictment suggested that the grand jury believed defendant's use of the money was improper only if the money was used without the mother's consent, but at trial, the State produced no evidence that defendant had used her mother's money without her consent, and several witnesses testified that she, in fact, had obtained her mother's consent. Decker v. State, — So. 2d —, 2011 Miss. LEXIS 296

(Miss. June 16, 2011), opinion withdrawn by 2011 Miss. LEXIS 324 (Miss. June 30, 2011).

4. Double jeopardy.

Crime of sexual abuse of a vulnerable adult under Miss. Code Ann. § 43-47-19 does not encompass the crime of sexual battery under Miss. Code Ann. § 97-3-95, and a conviction of both offenses does not implicate double jeopardy concerns because the crimes require additional and different elements of proof; specifically, the former offense does not require proof of penetration, while the latter offense does require this proof. Additionally, abuse of a vulnerable adult requires proof that defendant willfully inflicted physical pain or injury upon a vulnerable adult, while sexual battery has no such requirement; there are additional differences in that sexual battery does not requuire that the victim's abilities to provide for his or her protection from sexual contact be impaired by the infirmities of aging or that the victim be a patient or resident of a care facility, while the charge of abuse of a vulnerable adult does require this additional element. Simoneaux v. State, 29 So. 3d 26 (Miss. Ct. App. 2009), writ of certiorari denied by 29 So. 3d 774, 2010 Miss. LEXIS 115 (Miss. 2010), writ of certiorari denied by 131 S. Ct. 151, 178 L. Ed. 2d 38, 2010 U.S. LEXIS 6093, 79 U.S.L.W. 3196 (U.S. 2010).

§ 43-47-21. Payment for services; orders to provide custody, care, and maintenance.

At the time the department makes an evaluation of the case reported, in accordance with the provisions of Section 43-47-9, it shall be determined, according to the regulations set by the department, whether the vulnerable person is financially capable of paying for the essential services. If he is, he shall make reimbursement for the costs of providing the needed essential services. If it is determined that he is not financially capable of paying for such services, they shall be provided at no cost to the recipient of the services. The court may order the department or any public agency to provide for the custody, care and maintenance of such vulnerable person. Provided, however, that the care, custody and maintenance of any vulnerable person shall be within statutory authorization and budgetary means of such institution, facility, agency or department. Notwithstanding any provision to the contrary, it is not the intent of the Legislature through the adoption of this chapter to authorize any court exercising jurisdiction over a vulnerable person to enlarge or bring about the addition of new groups or categories of recipients or to increase the types of care and services for such persons under the Mississippi Medicaid Law, and any court exercising jurisdiction over a vulnerable person shall not, in any way, enter an order against the Division of Medicaid to provide for the custody, care, or maintenance of a vulnerable person who is not otherwise eligible for medical assistance under Section 43-13-115 or services under Section 43-13-117.

SOURCES: Laws, 1986, ch. 468, § 11; reenacted, Laws, 1989, ch. 381, § 11; Laws, 2010, ch. 357, § 12, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment, throughout the section, substituted "vulnerable person" for "vulnerable adult"; and in the last sentence, substituted "such persons" for "such adults."

§ 43-47-23. Authority to seek cooperation of organizations and agencies.

The department and the court are authorized to seek the cooperation of all public agencies, departments, societies, organizations or agencies having for their object the protection or aid of vulnerable persons. These agencies, departments, societies and organizations shall provide any such assistance as is necessary.

SOURCES: Laws, 1986, ch. 468, § 12; reenacted, Laws, 1989, ch. 381, § 12; Laws, 2001, ch. 603, § 5; Laws, 2010, ch. 357, § 13, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment substituted "vulnerable persons" for "adults."

§ 43-47-25. Immunity of department employees from liability.

Any officer, agent or employee of the department in the good faith exercise of his duties under this chapter shall not be liable for any civil damages as a result of his acts or omissions in rendering assistance or aid to any vulnerable person.

SOURCES: Laws, 1986, ch. 468, § 13; reenacted, Laws, 1989, ch. 381, § 13; Laws, 2010, ch. 357, § 14, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment substituted "vulnerable person" for "vulnerable adult."

§ 43-47-29. Appointment of conservator pursuant to Section 93-13-251.

In addition to the powers granted under the provisions of this chapter, the department is authorized to petition the court under the provisions of Section 93-13-251 for appointment of a conservator for any vulnerable person.

SOURCES: Laws, 1986, ch. 468, § 15; reenacted, Laws, 1989, ch. 381, § 15; Laws, 2010, ch. 357, § 15, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment substituted "vulnerable person" for "vulnerable adult."

§ 43-47-31. Objection to provision of services on privacy grounds; persons receiving treatment by spiritual means; objection to medical treatment.

(1) Nothing in this chapter shall be construed to authorize, permit or require any emergency or protective services in contravention of the stated or implied objection of such person based upon his right of privacy, which is grounded in the federal courts and the courts of this state, except in a situation where the vulnerable person is in imminent danger of serious harm.

(2) Nothing in this chapter shall be construed to mean a person is neglected or in need of emergency or protective services for the sole reason he is being furnished or relies upon treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denominations.

(3) Nothing in this chapter shall be construed to authorize, permit or require any medical care or treatment in contravention of the stated or implied objection of such person.

SOURCES: Laws, 1986, ch. 468, § 16; reenacted, Laws, 1989, ch. 381, § 16; Laws, 2001, ch. 603, § 7; Laws, 2010, ch. 357, § 16, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment substituted "vulnerable person" for "vulnerable adult" in (1).

§ 43-47-33. Education program.

The department shall establish a comprehensive, aggressive program to educate the general public of (a) the existence and provisions of the Mississippi Vulnerable Persons Act of 1986; (b) the duty to report the abuse, neglect or exploitation of any and all vulnerable persons, and (c) criminal sanctions associated with violations of the Mississippi Vulnerable Persons Act.

SOURCES: Laws, 1986, ch. 468, § 17; reenacted, Laws, 1989, ch. 381, § 17; Laws, 2001, ch. 603, § 8; Laws, 2010, ch. 357, § 17, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment twice substituted "Vulnerable Persons Act" for "Vulnerable Adults Act" and substituted "vulnerable persons" for "vulnerable adults."

§ 43-47-35. Implementation of chapter if federal funds become available.

It is the intent of the Legislature that the department shall implement the provisions of this chapter in the event federal funding is made available therefor under a social services block grant, or in the event any other federal or state funding is made available to provide for protective services for vulnerable persons.

SOURCES: Laws, 1986, ch. 468, § 18; reenacted, Laws, 1989, ch. 381, § 18; Laws, 2001, ch. 603, § 9; Laws, 2010, ch. 357, § 18, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment substituted "vulnerable persons" for "vulnerable adults."

§ 43-47-37. Reporting of abuse and exploitation of patients and residents of care facilities.

(1) Any person who, within the scope of his employment at a care facility as defined in Section 43-47-5(b), or in his professional or personal capacity, has

knowledge of or reasonable cause to believe that any patient or resident of a care facility has been the victim of abuse, neglect or exploitation shall report immediately the abuse, neglect or exploitation.

(2) The reporting of conduct as required by subsection (1) of this section shall be made:

(a) By any employee of any home health agency, orally or telephonically, within twenty-four (24) hours of discovery, excluding Saturdays, Sundays and legal holidays, to the department and the Medicaid Fraud Control Unit of the Attorney General's office.

(b) By a home health agency, in writing within seventy-two (72) hours of discovery to the department and the Medicaid Fraud Control Unit. Upon initial review, the Medicaid Fraud Control Unit shall make a determination whether or not the person suspected of committing the reported abuse, neglect or exploitation was an employee of the home health agency. If so, the Medicaid Fraud Control Unit shall determine whether there is substantial potential for criminal prosecution, and upon a positive determination, shall investigate and prosecute the complaint or refer it to an appropriate criminal investigative or prosecutive authority. If the alleged perpetrator is not an employee of the home health agency, the department shall investigate and process the complaint or refer it to an appropriate investigative or prosecutive authority.

(c) By all other care facilities, orally or telephonically, within twenty-four (24) hours of discovery, excluding Saturdays, Sundays and legal holidays, to the State Department of Health and the Medicaid Fraud Control Unit of the Attorney General's office.

(d) By all other care facilities, in writing, within seventy-two (72) hours of the discovery, to the State Department of Health and the Medicaid Fraud Control Unit. If, upon initial review by the State Department of Health and the Medicaid Fraud Control Unit, a determination is made that there is substantial potential for criminal prosecution, the unit will investigate and prosecute the complaint or refer it to an appropriate criminal investigative or prosecutive authority.

(3) The contents of the reports required by subsections (1) and (2) of this section shall contain the following information unless the information is unobtainable by the person reporting:

(a) The name, address, telephone number, occupation and employer's address and telephone number of the person reporting;

(b) The name and address of the patient or resident who is believed to be the victim of abuse or exploitation;

(c) The details, observations and beliefs concerning the incident;

(d) Any statements relating to incident made by the patient or resident;

(e) The date, time and place of the incident;

(f) The name of any individual(s) believed to have knowledge of the incident;

(g) The name of the individual(s) believed to be responsible for the incident and their connection to the patient or resident; and

(h) Such other information that may be required by the State Department of Health and/or the Medicaid Fraud Control Unit, as requested.

(4) Any other individual who has knowledge of or reasonable cause to believe that any patient or resident of a care facility has been the victim of abuse, exploitation or any other criminal offense may make a report to the State Department of Health and the Medicaid Fraud Control Unit.

(5)(a) Any individual who, in good faith, makes a report as provided in this section or who testifies in an official proceeding regarding matters arising out of this section shall be immune from all criminal and civil liability. The immunity granted under this subsection shall not apply to any suspect or perpetrator of abuse, neglect or exploitation of any vulnerable person, or of any other criminal act under any statute of this state or municipal ordinance defining any act as a crime or misdemeanor.

(b) No person shall terminate from employment, demote, reject for promotion or otherwise sanction, punish or retaliate against any individual who, in good faith, makes a report as provided in this section or who testifies in any official proceeding regarding matters arising out of this section.

(6) Any care facility that complies in good faith with the requirements of this section to report the abuse or exploitation of a patient or resident in the care facility shall not be sanctioned by the State Department of Health for the occurrence of such abuse or exploitation if the care facility demonstrates that it adequately trained its employees and that the abuse or exploitation was caused by factors beyond the control of the care facility.

(7) Every person who knowingly fails to make the report as required by subsections (1), (2) and (3) of this section or attempts to induce another, by threat or otherwise, to fail to make a report as required by subsections (1), (2) and (3) of this section shall, upon conviction, be guilty of a misdemeanor and shall be punished by a fine of not exceeding Five Hundred Dollars ($500.00), or by imprisonment in the county jail for not more than six (6) months, or both such fine and imprisonment.

(8) Copies of Sections 43-47-7 and 43-47-37 shall be posted prominently in every health care facility.

(9) If, after initial inquiry or investigation, the Medicaid Fraud Control Unit determines that there is reasonable cause to believe that an employee of a home health agency has abused, neglected or exploited a vulnerable person, the unit shall notify the Mississippi State Department of Health of the alleged abuse, neglect or exploitation.

(10) Upon a judicial determination of evidence that an employee of a care facility has abused, neglected or exploited a vulnerable person, the appropriate investigative agency shall immediately provide the following information to the central registry: name, address, birth date, social security number of perpetrator; type of abuse, neglect and or exploitation; name, address, birth date, social security number of victim; and date of incident and report.

SOURCES: Laws, 1990, ch. 493, § 2; Laws, 1991, ch. 431 § 4; Laws, 1996, ch. 351, § 1; Laws, 2001, ch. 603, § 10; Laws, 2010, ch. 357, § 19, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment, in (5)(a), (9) and (10), substituted "vulnerable person" for "vulnerable adult."

§ 43-47-39. Vulnerable Persons Training, Investigation and Prosecution Trust Fund created; purpose; funding.

(1) There is created in the State Treasury a special fund to be known as the Vulnerable Persons Training, Investigation and Prosecution Trust Fund. The purpose of the fund shall be to provide funding for the Vulnerable Persons Unit in the Office of the Attorney General to assist in the training of law enforcement officers, judges, district attorneys, state agencies and investigators at the Department of Human Services with regard to issues arising under the Vulnerable Persons Act, and to provide funding for the Vulnerable Persons Unit in the Office of the Attorney General to assist in the investigation and prosecution of statewide offenders who abuse, neglect or exploit vulnerable persons. The fund shall be a continuing fund, not subject to fiscal-year limitations.

(2) Funding shall be provided by assessments collected from violations set out in Section 99-19-73.

SOURCES: Laws, 2005, 2nd Ex Sess, ch. 1, § 1; Laws, 2010, ch. 357, § 20, eff from and after July 1, 2010.

Amendment Notes — The 2010 amendment, in the first sentence in (1), substituted "Vulnerable Persons" for "Vulnerable Adults" throughout, and substituted "vulnerable persons" for "vulnerable adults."

CHAPTER 53

Mississippi Leadership Council on Aging

§ 43-53-9. Council on Aging not to impede Vulnerable Adults Act.

Editor's Note — "Mississippi Vulnerable Adults Act," referred to in this section, was renamed the "Vulnerable Persons Act" by Laws of 2010, ch. 357.

CHAPTER 59

Mississippi Commission on the Status of Women

§ 43-59-9. Interagency council; composition; function; meetings.

Editor's Note — Section 37-4-5 provides that the terms "Junior College Commission" and "State Board for Community and Junior Colleges," wherever they appear in the laws of Mississippi, shall mean the "Mississippi Community College Board."

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